

ORIGINAL

No. 13147

United States
Court of Appeals
for the Ninth Circuit.

ESTATE OF MABEL COCHRAN, Deceased;
SIDNEY ELMER COCHRAN and DON-
ALD ROBERT COCHRAN, Executors, and
JOSEPH E. COCHRAN,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

FILED

MAR - 3 1952

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

ELI. FREED, ESQ.,

EMMETT GEBAUER, ESQ.

For Respondent:

C. W. NYQUIST, ESQ.

The Tax Court of the United States

Docket No. 26266

ESTATE OF MABEL COCHRAN, Deceased;
SIDNEY ELMER COCHRAN and DONALD
ROBERT COCHRAN, Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1949

Dec. 27—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 27—Request for hearing in San Francisco, Calif., filed by taxpayer. Granted 1/9/50.

Dec. 29—Copy of petition served on General Counsel.

1950

Feb. 8—Answer filed by Respondent.

Feb. 13—Copy of answer served on taxpayer, San Francisco, Calif.

Mar. 8—Hearing set May 8, 1950, San Francisco, Calif.

May 11—Hearing had before Judge Hill on merits, stipulation of facts filed at hearing. Simultaneous briefs July 10, 1950. Replies August 9, 1950.

June 2—Transcript of Hearing 5/11/50 filed.

1950

July 10—Motion for extension of time to July 24, 1950, to file brief filed by Respondent. Granted.

July 10—Brief filed by taxpayer. Copy served 7/25/50.

July 24—Brief filed by General Counsel.

Aug. 21—Motion for extension to September 1, 1950, to file reply brief filed by taxpayer. Granted 8/21/50.

Aug. 23—Reply brief filed by General Counsel.

Aug. 31—Reply brief filed by taxpayer. Copy served.

1951

July 12—Memorandum findings of fact and opinion rendered. Hill J. Decision will be entered for Respondent. Copy served 7/16/51.

July 16—Decision entered. Black J. Div. 15.

Oct. 8—Petition for review by United States Court of Appeals, Ninth Circuit, filed by taxpayer.

Oct. 8—Designation of contents of record on review filed by taxpayer.

Oct. 8—Affidavit of Service by Mail filed.

Oct. 8—Proof of service of petition for review and designation of record filed by General Counsel.

The Tax Court of the United States

Docket No. 26267

JOSEPH E. COCHRAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1949

Dec. 27—Petition received and filed. Taxpayer notified. Fee paid.

Dec. 27—Request for hearing in San Francisco, Calif., filed by taxpayer. Granted 1/9/50.

Dec. 29—Copy of petition served on General Counsel.

1950

Feb. 8—Answer filed by Respondent.

Feb. 13—Copy of Answer served on taxpayer, San Francisco.

Mar. 8—Hearing set May 8, 1950, San Francisco, Calif.

May 11—Hearing had before Judge Hill on the merits, stipulation of facts filed at hearing. Simultaneous briefs July 10, 1950. Replies August 9, 1950.

June 2—Transcript of Hearing 5/11/50 filed.

July 10—Brief filed by taxpayer. Copy served 7/25/50.

1950

July 10—Motion for extension of time to July 24, 1950, to file brief, filed by Respondent. Granted.

July 24—Brief filed by General Counsel.

Aug. 21—Motion for extension to September 1, 1950, to file reply brief filed by taxpayer. Granted 8/21/50.

Aug. 23—Reply brief filed by General Counsel.

Aug. 31—Reply brief filed by taxpayer. Copy served 8/31/50.

1951

July 12—Memorandum findings of fact and opinion rendered. Hill J. Decision will be entered for Respondent. Copy served 7/16/51.

July 16—Decision entered, Black J. Div. 15.

Oct. 8—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by taxpayer.

Oct. 8—Designation of contents of record on review filed by taxpayer.

Oct. 8—Affidavit of Service by Mail filed.

Oct. 8—Proof of service of petition for review and designation of record filed by General Counsel.

The Tax Court of the United States

Docket No. 26266

ESTATE OF MABEL COCHRAN, Deceased;
SIDNEY ELMER COCHRAN and DONALD
ROBERT COCHRAN, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IRA:90-D:EMR (C:TS:PD SF:GBW)) dated October 17, 1949, and as a basis for this proceeding alleges as follows:

1. The petitioner, viz., Estate of Mabel Cochran, deceased, is acting by and through Sidney Elmer Cochran and Donald Robert Cochran, the duly appointed and acting Executors of said deceased by virtue of proceedings had in the Superior Court of the State of California, in and for the County of Alameda. The principal office of the Executors is c/o Cochran & Celli, 12th and Harrison Streets, Oakland, California. The returns for the periods here involved were filed with the Collector for the First District of California.

2. The notice of deficiency (a copy of which is

attached hereto and marked Exhibit "A") was mailed to the petitioner on October 17, 1949.

3. The taxes in controversy are income and victory taxes in the amount of \$9,468.67 for the calendar year 1943, and income taxes in the amount of \$8,005.14 for the calendar year 1944.

4. The determinations of tax set forth in said notice of deficiency are based upon the following error:

(1) In determining the taxable net income of Mabel Cochran (deceased) for the years 1942 and 1943 and the year 1944, the Commissioner erroneously attributed to Mabel Cochran 50% of the distributive shares of the partnership income of her two daughters, Winifred Cochran Irwin and Bernice C. Johnson, from the partnership of Cochran & Celli, reported by them in each of the aforesaid years in their income tax returns as their taxable income as partners in Cochran & Celli, entitled to share in the net profits of said partnership. The Commissioner contends that said Winifred Cochran Irwin and Bernice C. Johnson should not be recognized as true partners of Cochran & Celli and that all of the net profits or income from said partnership attributed to them were in fact realized equally by Mabel Cochran and Joseph E. Cochran, her husband, the father of said daughters.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Prior to January 1, 1938, Cochran & Celli, a Chevrolet automobile dealership in Oakland, Cali-

fornia, was operated by J. E. Cochran and Bernardo Celli, Sr., as partners, and during the year 1937 said persons discussed and arranged between themselves and their wives and their adult children, the reorganization of said business into a partnership composed of all of said persons. There followed a formal written partnership agreement executed by all of said persons, a true copy of which, dated January 1, 1938, is attached hereto and marked Exhibit "B."

(2) Each and all of said persons entered into said partnership agreement (Exhibit "B") with the intention of really and truly conducting and operating said business of Cochran & Celli as a bona fide partnership.

(3) The initial capital of Cochran & Celli under said partnership agreement (Exhibit "B") consisted of separate contributions of vested community property belonging to J. E. Cochran and Mabel Cochran, his wife, and to Bernardo Celli, Sr., and Anna Celli, his wife, and of property belonging to their children, Bernardo Celli, Jr., Lloyd Celli, Bernice M. Cochran (Johnson), Winifred Cochran (Irwin), and Sidney Elmer Cochran, derived by them from their parents by irrevocable and unsailable gifts. Said families of Cochran and Celli were and are unrelated to each other.

(4) Thereafter and continuously, each and all of said persons represented and conducted themselves really and truly as partners of Cochran & Celli.

Wherefore, the petitioner prays that this Court

may hear the proceeding and determine that there are no deficiencies due from the petitioner for the years 1943 and 1944.

/s/ ELI FREED,

/s/ EMMETT GEBAUER,

Counsel for Petitioners.

Duly verified.

Received and filed T. C. U. S. December 27, 1949.

Served December 29, 1949.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above petitioner, admits and denies as follows:

1 to 3, inclusive. Admits the allegations contained in paragraphs 1 to 3, inclusive, of the petition.

4 (1). Denies the allegations of error contained in subparagraph (1) of paragraph 4 of the petition.

5 (1). Admits that prior to January 1, 1938, Cochran & Celli, a Chevrolet automobile dealership in Oakland, California, was operated by J. E. Cochran and Bernardo Celli, Sr., as partners, but denies the remaining allegations contained in subparagraph (1) of paragraph 5 of the petition.

(2) to (4), inclusive. Denies the allegations contained in subparagraphs (2) to (4), inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,

CHARLES W. NYQUIST,
Special Attorneys, Bureau of
Internal Revenue.

Received and filed T.C.U.S. February 8, 1950.

[Title of Tax Court and Cause.]

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IRA:90-D:EMR (C:TS:PD SF:GBW)) dated October 17, 1949,

and as a basis for his proceeding alleges as follows:

1. The petitioner is an individual residing at 108 Van Ripper Road, Orinda, California. The returns for the periods here involved were filed with the Collector for the First District of California.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on October 17, 1949.

3. The taxes in controversy are income and victory taxes in the amount of \$10,078.72 for the calendar year 1943, and income taxes in the amount of \$8,619.36 for the calendar year 1944.

4. The determinations of tax set forth in said notice of deficiency are based upon the following error:

- (1) In determining the taxable net income of the petitioner for the years 1942 and 1943 and the year 1944, the Commissioner erroneously attributed to the petitioner 50% of the distributive shares of the partnership income of his two daughters, Winifred Cochran Irwin and Bernice C. Johnson, from the partnership of Cochran & Celli, reported by them in each of the aforesaid years in their income tax returns as their taxable income as partners in Cochran & Celli, entitled to share in the net profits of said partnership. The Commissioner contends that said daughters, Winifred Cochran Irwin and Bernice C. Johnson, should not be recognized as true partners of Cochran & Celli and that all of the net profits or income from such partnership attributed to them were in fact realized equally by

petitioner and Mabel Cochran, the wife of petitioner, who was then living and who is now deceased.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(1) Prior to January 1, 1938, Cochran & Celli, a Chevrolet automobile dealership in Oakland, California, was operated by J. E. Cochran and Bernardo Celli, Sr., as partners, and during the year 1937 said persons discussed and arranged between themselves and their wives and their adult children, the reorganization of said business into a partnership composed of all of said persons. There followed a formal written partnership agreement executed by all of said persons, a true copy of which, dated January 31, 1938, is attached hereto and marked Exhibit "B."

(2) Each and all of said persons entered into said partnership agreement (Exhibit "B") with the intention of really and truly conducting and operating said business of Cochran & Celli as a bona fide partnership.

(3) The initial capital of Cochran & Celli under said partnership agreement (Exhibit "B") consisted of separate contributions of vested community property belonging to J. E. Cochran and Mabel Cochran, his wife, and to Bernardo Celli, Sr., and Anna Celli, his wife, and of property belonging to their children, Bernardo Celli, Jr., Lloyd Celli, Bernice M. Cochran (Johnson), Winifred Cochran (Irwin), and Sidney Elmer Cochran, derived by them from their parents by irrevocable and unas-

sailable gifts. Said families of Cochran and Celli were and are unrelated to each other.

(4) Thereafter and continuously, each and all of said persons represented and conducted themselves really and truly as partners of Cochran & Celli.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that there are no deficiencies due from the petitioner for the years 1943 and 1944, and for such relief as may be appropriate.

/s/ ELI FREED,

/s/ EMMETT GEBAUER,

Counsel for Petitioner.

Duly verified.

Received and filed T.C.U.S. December 27, 1949.

Served December 29, 1949.

[Title of Tax Court and Cause.]

ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above petitioner, admits and denies as follows:

1 to 3, inclusive. Admits the allegations contained in paragraphs 1 to 3, inclusive, of the petition.

4 (1). Denies the allegations of error contained

in subparagraph (1) of paragraph 4 of the petition.

5 (1). Admits that prior to January 1, 1938, Cochran & Celli, a Chevrolet automobile dealership in Oakland, California, was operated by J. E. Cochran and Bernardo Celli, Sr., as partners, but denies the remaining allegations contained in subparagraph (1) of paragraph 5 of the petition.

(2) to (4), inclusive. Denies the allegations contained in subparagraphs (2) to (4), inclusive, of paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioners' appeal denied.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

T. M. MATHER,
CHARLES W. NYQUIST,
Special Attorneys, Bureau of
Internal Revenue.

Received and filed T.C.U.S. February 8, 1950.

MINUTES OF PROCEEDINGS

The Tax Court of the United States

Date: May 11, 1950.

Place: San Francisco, Calif.

Docket No. 26266, 26267.

Proceeding: Est. of Mabel Cochran, Dec'd, Sidney Elmer Cochran and Donald Robert Cochran, Executors: Joseph E. Cochran.

Assigned to: Judge Hill, Division No. 2.

Counsel for Petitioner: Eli Freed, Esq., Emmett Gebauer, Esq., 1069 Mills Bldg., San Francisco, Calif.

Counsel for Respondent: C. W. Nyquist, Esq.

Stenographic Reporter: Osterman.

Hearing: 10-12:30, 2-3:25 (hour commenced and closed). Sub.

Transcript Ordered (Yes or No): Yes.

On the merits: Yes. On motion of.....

Ordered:

Filed at hearing: Stipulation of Facts in #26266, 26267.

Petitioners' brief

Respondent's brief: Simultaneous, July 10, 1950; Reply, August 9, 1950.

Witnesses for Petitioner:

J. E. COCHRAN,
SIDNEY E. COCHRAN,
BERNICE C. JOHNSON,
WINIFRED C. IRWIN,
BERNARDO CELLI, JR.

Exhibits

Petitioner's (Number and Describe)

23—Partnership return of income.

24—Partnership return of income.

25—Partnership return of income.

26—Certificate.

/s/ MAUDE R. CARPENTER,
Acting Deputy Clerk.

Form 431

Rev. Oct., 1942.

The Tax Court of the United States

No. 26266

ESTATE OF MABEL COCHRAN, Deceased;
SIDNEY ELMER COCHRAN and DONALD
ROBERT COCHRAN, Executors,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

No. 26267

JOSEPH E. COCHRAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STIPULATION OF FACTS

It is mutually stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following statements may be taken as true by the Court with the reservation that this stipulation shall be without prejudice to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated.

1. For a number of years prior to December 31, 1937, J. E. Cochran and Bernardo Celli, Sr., owned and operated as copartners a Chevrolet automobile dealership in Oakland, California, under the firm name "Cochran & Celli."

2. On December 31, 1937, Mabel Cochran was the wife of J. E. Cochran and Anna Celli was the wife of Bernardo Celli, Sr. The partnership interests referred to in paragraph 1, *supra*, constituted community property of the partners and their wives under the laws of California. On said date J. E. Cochran and Mabel Cochran had four children, Bernice M. Cochran, Winifred Cochran and Sidney Elmer Cochran, all adults, and Donald Robert Cochran, who was seventeen years of age. Bernardo Celli, Sr., and Anna Celli had two children, Bernardo Celli, Jr., and Lloyd Celli, both of whom were adults.

3. On December 31, 1937, the opening credit balances of J. E. Cochran and Bernardo Celli, Sr., on the books of the partnership were \$242,914.94 and \$237,605.44, respectively. As of said date journal entries were made transferring \$100,617.43 from the J. E. Cochran investment account to a new account set up in the name of Mabel Cochran and transferring \$102,024.88 from the Bernardo Celli, Sr., investment account to a new account set up in the name of Anna Celli. As of said date other entries were made transferring amounts from the accounts of each of the four parents to each of their respective adult children. Attached hereto and marked Exhibits 1 through 6 are excerpts from the investment accounts in the names of J. E. Cochran, Mabel Cochran, Sidney E. Cochran, Winifred Irwin (formerly Winifred Cochran), Bernice Johnson, (Mrs. Harold Johnson, formerly Bernice Cochran),

and Donald Cochran, respectively, on the books of partnership showing entries relating to transfers from one investment account to another during the period from December 31, 1937, to December 31, 1944, inclusive.

5. On March 15, 1938, J. E. Cochran filed a gift tax return for the year 1937 on which he reported gifts in the following words:

Description of Gift, Motive, and Donee's Name	Date of Gift	Value at Date of Gift
“(3½%) J.E.C. interest in Partner- ship Cochran & Celli Winifred, 8 Aztec Way, Oakland Love and Affection Sidney E. Cochran, 2927 - 76 Ave., Oakland.. Mrs. Harold Johnson, Coalinga, Calif. “Children of Donor”	Dec. 24 Dec. 24 Dec. 24	\$16,818.21 16,818.21 16,818.21

On said return he claimed an exclusion of \$15,000.00 and a specific exemption of \$35,454.63, and reported no tax due and paid no tax thereon. On March 15, 1938, Mabel Cochran filed a gift tax return for the year 1937 showing the same donees, amounts, exclusions, and exemption as were shown on Joseph Cochran's return, and she also paid no gift tax for said year.

6. On or about January 1, 1938, the adult members of the Cochran and the Celli families mentioned in paragraph 2, *supra*, executed a document entitled “Articles of Copartnership,” a copy of

which is attached hereto and marked "Exhibit 7." On or about February 28, 1945, said parties and Donald Robert Cochran executed an amendment to said "Articles of Copartnership," a copy of which amendment is attached hereto and marked "Exhibit 8."

7. On or about January 1, 1938, Bernardo Celli, Jr., and Sidney Elmer Cochran executed a written declaration of trust, with the written consent of their wives. A copy of said declaration of trust is attached hereto and marked "Exhibit 9." Pursuant to said declaration of trust the real property described therein was conveyed to Bernardo Celli, Jr., and Sidney Elmer Cochran by deed dated January 1, 1938, and recorded February 23, 1938, at the request of the grantees, in Official Records Volume 3599, page 179, of Alameda County, State of California.

8. Attached hereto and marked "Exhibit 10" is a schedule showing the closing balances for each of the years 1937 through 1944 of each of the investment accounts maintained on the ledger of Cochran & Celli.

9. Attached hereto and marked "Exhibit 11" is a schedule showing the partners' earnings for services rendered, paid for each of the years 1938 through 1944 as shown on the salary accounts of Cochran & Celli.

10. Attached hereto and marked "Exhibit 12" is a summary of annual withdrawals charged to

individual accounts. These amounts are in addition to the withdrawals for services rendered shown in "Exhibit 11" and the transfers entered as gifts shown in Exhibits 1 to 6, inclusive.

11. Attached hereto and marked "Exhibit 13" and "Exhibit 14" are schedules showing the withdrawals charged to the Bernice Cochran Johnson and the Winifred Cochran Irwin accounts.

12. Attached hereto and marked "Exhibit 15" through "Exhibit 21" are balance sheets of Cochran & Celli for the years 1938 through 1944, respectively, prepared and certified to by Lawrence H. Goebel, Certified Public Accountant.

13. Attached hereto and marked "Exhibit 22" is a schedule of annual net profits reported on the Federal partnership information returns of Cochran & Celli for the years 1932 to 1944, inclusive.

14. Joseph E Cochran, Mabel Cochran, Bernice C. Johnson and Winifred C. Irwin each filed an individual Federal income tax return for each of the calendar years 1943 and 1944. On said returns they reported gross income, income from the partnership of Cochran & Celli, net income, and income tax due in the amounts shown in the following schedule:

	1943			
	Gross Income	Income from Partnership	Net Income	Tax Due
J. E. Cochran	\$20,777.36	\$20,777.36	\$19,756.31	\$8,822.06
Mabel Cochran	15,977.36	15,977.36	15,325.13	6,701.60
Bernice C. Johnson....	16,912.12	14,202.09	16,638.60	5,584.98
Winifred C. Irwin	15,910.30	14,202.09	15,605.32	5,481.02

1944

J. E. Cochran	\$20,370.77	\$20,370.77	\$19,832.73	\$7,467.23
Mabel Cochran	15,570.77	15,570.77	15,039.85	4,949.93
Bernice C. Johnson..	16,259.16	13,840.71	15,759.16	4,839.58
Winifred C. Irwin	15,551.95	13,840.70	15,051.95	4,955.98

The "Tax Due" in the above schedule for the year 1943 includes the unforgiven part of the 1942 tax. The "Income from Partnership" for the year 1944 includes a small amount of capital gain (\$318.30 or less) in each case.

/s/ ELI FREED,

/s/ EMMETT GEBAUER,

Counsel for Petitioner.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel
for Respondent.

EXHIBIT No. 1

Cochran & Celli

J. E. Cochran Investment Account

as

Transcribed from General Ledger

				Debit	Credit
Dec. 31, 1937	JV	469	Transfer to Mabel Cochran	\$100,617.43	
Dec. 31, 1937	JV	471	Transfer to Sidney E. Cochran	16,818.21	
Dec. 31, 1937	JV	471	Transfer to Winifred Cochran	16,818.21	
Dec. 31, 1937	JV	471	Transfer to Bernice Johnson	16,818.21	
Mar. 31, 1941	CD	46	Gift to Donald R. Cochran	4,000.00	
Mar. 31, 1942	CD	32	Gift to Donald R. Cochran	4,000.00	
Dec. 31, 1942	CD	115	Gift to Sidney E. Cochran	4,000.00	
Dec. 31, 1942	CD	115	Gift to Bernice Johnson	4,000.00	
Dec. 31, 1942	CD	115	Gift to Winifred Irwin	4,000.00	
Jan. 31, 1943	CD	10	Gift to Donald R. Cochran	3,000.00	
Jan. 31, 1943	CD	10	Gift to Sidney E. Cochran	3,000.00	
Jan. 31, 1943	CD	10	Gift to Bernice Johnson	3,000.00	
Jan. 31, 1943	CD	10	Gift to Winifred Irwin	3,000.00	
Apr. 30, 1944	CD	33	Gift to Donald R. Cochran	3,000.00	
Apr. 30, 1944	CD	33	Gift to Sidney E. Cochran	3,000.00	
Apr. 30, 1944	CD	33	Gift to Bernice Johnson	3,000.00	
Apr. 30, 1944	CD	33	Gift to Winifred Irwin	3,000.00	

The above entries are posted from the Journal (JV) and Cash Disbursements Book (CD).

EXHIBIT No. 2

Cochran & Celli

Mabel Cochran Investment Account

as

Transcribed from General Ledger

				Debit	Credit
					\$100,617.43
Dec. 31, 1937	JV	469	From J. E. Cochran, Investment		
Dec. 31, 1937	JV	472	Transfer to Sidney E. Cochran	\$ 16,818.21	
Dec. 31, 1937	JV	472	Transfer to Winifred Cochran	16,818.21	
Dec. 31, 1937	JV	472	Transfer to Bernice Johnson	16,818.21	
Mar. 31, 1941	CD	46	Gift to Donald R. Cochran	4,000.00	
Mar. 31, 1942	CD	32	Gift to Donald R. Cochran	4,000.00	
Dec. 31, 1942	CD	115	Gift to Sidney E. Cochran	4,000.00	
Dec. 31, 1942	CD	115	Gift to Bernice Johnson	4,000.00	
Dec. 31, 1942	CD	115	Gift to Winifred Cochran	4,000.00	
Jan. 31, 1943	CD	10	Gift to Sidney E. Cochran	3,000.00	
Jan. 31, 1943	CD	10	Gift to Donald R. Cochran	3,000.00	
Jan. 31, 1943	CD	10	Gift to Bernice Johnson	3,000.00	
Jan. 31, 1943	CD	10	Gift to Winifred Irwin	3,000.00	
Apr. 30, 1944	CD	33	Gift to Sidney E. Cochran	3,000.00	
Apr. 30, 1944	CD	33	Gift to Donald R. Cochran	3,000.00	
Apr. 30, 1944	CD	33	Gift to Bernice Johnson	3,000.00	
Apr. 30, 1944	CD	33	Gift to Winifred Irwin	3,000.00	

The above entries are posted from the Journal (JV) and Cash Disbursements Book (CD).

EXHIBIT No.3

Cochran & Celli

Sidney E. Cochran Investment Account

as

Transcribed from General Ledger

					Debit	Credit
Dec. 31, 1937	JV	471	By Gift from J. E. Cochran			\$ 16,818.21
Dec. 31, 1937	JV	471	By Gift from Mabel Cochran			16,818.21
Mar. 31, 1941	CD	54	Gift to Donald R. Cochran	4,000.00		
Mar. 31, 1942	CD	32	Gift to Donald R. Cochran	4,000.00		
Dec. 31, 1942	CR	72	Gift from J. E. Cochran		4,000.00	
Dec. 31, 1942	CR	72	Gift from Mabel Cochran		4,000.00	
Jan. 31, 1943	CR	5	Gift from Mabel Cochran		3,000.00	
Jan. 31, 1943	CR	5	Gift from J. E. Cochran		3,000.00	
Jan. 31, 1943	CD	10	Gift to Donald R. Cochran	2,500.00		
Apr. 30, 1944	CR	23	Cash Paid In		6,000.00	

The above entries are posted from the Journal (JV), and Cash Disbursements Book (CD), and the Cash Receipts Book (CR).

EXHIBIT No. 4

Cochran & Celli

Winifred Irwin Investment Account

as

Transcribed from General Ledger

					Debit	Credit
Dec. 31, 1937	471	JV	Gift from J. E. Cochran			\$ 16,818.21
Dec. 31, 1937	471	JV	Gift from Mabel Cochran			16,818.21
Mar. 31, 1941	46	CD	Gift to Donald R. Cochran	4,000.00		
Mar. 31, 1942	32	CD	Gift to Donald R. Cochran	4,000.00		
Dec. 31, 1942	72	CR	Gift from J. E. Cochran		4,000.00	
Dec. 31, 1942	72	CR	Gift from Mabel Cochran		4,000.00	
Jan. 31, 1943	5	CR	Gift from J. E. Cochran		3,000.00	
Jan. 31, 1943	5	CR	Gift from Mabel Cochran		3,000.00	
Jan. 31, 1943	10	CD	Gift to Donald R. Cochran	2,500.00		
Apr. 30, 1944	23	CR	Cash Paid In		6,000.00	

The above entries are posted from the Journal (JV), and Cash Disbursements Book (CD), and the Cash Receipts Book (CR).

EXHIBIT No. 5

Cochran & Celli

Bernice Johnson Investment Account

as

Transcribed from General Ledger

				Debit	Credit
Dec. 31, 1937	JV	471	Gift from J. E. Cochran		\$ 16,818.21
Dec. 31, 1937	JV	471	Gift from Mabel Cochran		16,818.21
Mar. 31, 1941	CD	46	Gift to Donald R. Cochran	\$ 4,000.00	
Mar. 31, 1942	CD	32	Gift to Donald R. Cochran	4,000.00	
Dec. 31, 1942	CR	72	Gift from J. E. Cochran		4,000.00
Dec. 31, 1942	CR	72	Gift from Mabel Cochran		4,000.00
Jan. 31, 1943	CR	5	Gift from J. E. Cochran		3,000.00
Jan. 31, 1943	CR	5	Gift from Mabel Cochran		3,000.00
Jan. 31, 1943	CD	10	Gift to Donald R. Cochran	2,500.00	
Apr. 30, 1944	CR	23	Cash Paid In		6,000.00

The above entries are posted from the Journal (JV), and Cash Disbursements Book (CD), and the Cash Receipts Book (CR).

EXHIBIT No. 6

Cochran & Celli

Donald R. Cochran Investment Account
as

Transcribed from General Ledger

			Debit	Credit
Mar. 31, 1941	CR	23	Cash Paid In	\$20,000.00
Mar. 31, 1942	CR	20	Cash Paid In	20,000.00
Jan. 31, 1943	CR	5	Cash Paid In	13,500.00
Apr. 30, 1944	CR	23	Cash Paid In	6,000.00

The above entries are posted from the Cash Receipts Book (CR).

EXHIBIT No. 7

These Articles of Co-partnership made and entered into this first day of January, 1938, by and between J. E. Cochran, Mabel Cochran, Bernice M. Cochran, Winifred Cochran, Sidney Elmer Cochran, Bernardo Celli, Sr., Anna Celli, Bernardo Celli, Jr., and Lloyd Celli, all of the County of Alameda, State of California,

Witnesseth:

1. That the said parties above named are the owners of that certain business conducted under the firm name and style of Cochran & Celli, and that the said parties have agreed and by these presents do agree to become co-partners in the said business and to continue to conduct the same under the firm name and style of Cochran & Celli, and that the said business shall deal with the buying, selling, manufacturing and repairing of new and used automobiles, parts, automotive vehicles and equipment, and generally shall deal in all things connected with or incidental to the automobile business; and

that the principal place for the conduct of said business shall be in the City of Oakland, County of Alameda, State of California.

2. It is mutually understood that the above-mentioned business was formerly owned and conducted by J. E. Cochran and Bernardo Celli, Sr., as co-partners, and that the parties hereto are the successors to the above-mentioned co-partnership and said parties and each of them hereby agree that they will be and are liable for, and will pay or perform any and all valid obligations, liabilities, or contracts, heretofore created or incurred in the name of and by the said co-partnership as and when owned by the said J. E. Cochran and Bernardo Celli, Sr.

3. It is understood and agreed by and between the said co-partners that they and each of them have contributed to the said co-partnership such portion, and that they and each of them own such portion in and of the said business as is designated by the percentage figure hereafter set out after their respective names:

J. E. Cochran	19.11% interest
Mabel Cochran	10.44% interest
Bernice M. Cochran.....	7.00% interest
Winifred Cochran	7.00% interest
Sidney Elmer Cochran...	7.00% interest
Bernardo Celli, Sr.	18.22% interest
Anna Celli	11.23% interest
Bernardo Celli, Jr.	10.00% interest
Lloyd Celli	10.00% interest

4. It is mutually agreed that any co-partner may transfer and convey to any other co-partner or to Donald Robert Cochran upon his attaining legal age, all or any portion of his interest in this said co-partnership, it being agreed that any such transfer may be accomplished by an instrument in writing signed by the transferor and accepted by the transferee, an executed copy of which said instrument shall be attached to and made a part of this agreement and thereafter the above-designated interest shall be considered as amended accordingly; provided, however that if transfer be made to Donald Robert Cochran, this partnership shall be deemed to have opened up to include him and all provisions hereof shall become applicable to him as a co-partner upon his signing and consenting in writing to the terms and conditions hereof and otherwise fully complying herewith.

5. It is hereby agreed that J. E. Cochran and Bernardo Celli, Sr., shall have, and are hereby given, the exclusive management and control of the conduct of said business and of any and all matters pertaining thereto, and the sole and exclusive power and authority to employ and discharge the employees of said co-partnership, and any and all thereof, including each and all of his co-partners herein as such employees; and to fix any and all salaries, including those of themselves and other co-partners; and the sole and exclusive power and authority to sign any and all checks, promissory notes or other evidence of indebtedness of said co-partnership; and the sole and exclusive power

and authority to collect and distribute the assets and profits of said co-partnership among and between the said co-partners, or any of them, and to make payment thereof, or of any part or portion thereof, to said respective co-partners; and the sole and exclusive authority to determine the necessity for, and to levy and collect assessments from the respective co-partners to provide for payment of losses or expenses; and the sole and exclusive power and authority to incur indebtedness for and in behalf of said co-partnership, and to make any and all contracts and agreements for and on behalf of said co-partnership, and to settle, adjust and compromise any and all disputes, claims and demands of whatsoever kind or nature in connection with said co-partnership or said co-partnership business; and generally, to do and perform any and all things necessary to be done or performed for the successful conduct, management, and control of said co-partnership business, including the right to delegate to others the power to exercise all or any of the said functions; and in so managing and controlling said business, and in the performance of said duties, as aforesaid, the said J. E. Cochran and Bernardo Celli, Sr., and their successors as hereinafter provided for, will give their attendance, and to the utmost of their ability exert themselves for the joint interest, benefit and advantage of the parties hereto; said controlling parties or their said successors shall hereinafter be designated as "Managers."

6. It is understood and agreed that an account-

ing shall be had at the close of each calendar year, and the net profits or losses of the said business determined, adjusted and distributed and partitioned or assessed to and among the co-partners in the same proportionate amount as their respective interests bear to the entire business, provided that the said "Managers" may, if they deem it advisable, set aside a portion of, or all of any said profits as a reserve for such purpose or purposes as may be deemed advisable by them. It is understood however that nothing herein shall prevent the distribution of profits or assessment of losses more often than the interval of one year, as above specified. The parties hereto and each of them, expressly agree to pay any such assessment within fifteen days of notice thereof.

7. The parties hereto, and each of them, hereby agree that they will immediately make and execute a good and sufficient will, and will thereafter as long as this co-partnership exists, continue to keep such a will in existence, and that the terms of any such will shall be such that the respective interest of the declaring co-partner in this co-partnership business will be allocated and devised to the particular beneficiaries desired by the declaring co-partner in fractional or percentage amounts, and that all of his or her interest will be devised in this manner. Said will shall further declare and designate that any and all other assets of the declarant's said estate (except a homestead for a surviving spouse or minor children) shall be first

exhausted in the payment of debts, claims, taxes in connection with the said estate, and expenses of administration.

8. It is hereby understood and agreed that upon the death of any of the aforesaid co-partners, the business of this co-partnership shall be continued and conducted by the surviving co-partners, and that in the event the interest or any part thereof, of the deceased co-partner is devised or bequeathed to any of the surviving co-partners, then the interest in the co-partnership of any such beneficiary shall be increased by the amount so devised or bequeathed. It is further agreed that in the event any interest in this co-partnership shall be devised or bequeathed to any one other than a co-partner, then and in that event the said individual or individuals shall become limited partners in the co-partnership business to the extent of the interest as devised or bequeathed, and the parties hereto agree that in any such event they will immediately prepare and execute in the manner required by law a certificate of limited partnership, setting forth the respective rights of the co-partners, both general and limited, and that the business of this co-partnership shall thereafter be carired on by the said limited co-partnership under the same firm name, and the said limited co-partnership shall become the successor in all respects of the firm business and assets, assuming all obligations, liabilities and contracts, and obtaining all credits and benefits thereof.

9. It is further agreed that in the event the above-mentioned J. E. Cochran or Bernardo Celli, Sr., or any partner, designated as "Managers" under Paragraph "5" above, shall die, then and in that event the right of control to the extent vested in the said individual shall be vested in the eldest surviving male partner, of the same family as the deceased co-partner, and he shall be entitled to exercise all control and do all things previously done by the deceased co-partner.

10. The parties hereto hereby agree that they and each of them will immediately obtain and at all times hereafter, as long as this co-partnership exists, keep in effect a policy of life insurance upon their respective lives in an amount (over and above any loans on the policy itself) not less than \$3,000.00 in excess of any and all obligations (exclusive of those owned by the co-partnership (owing or which shall hereafter become owing by the said partner, and that the said policy of insurance shall be carried in a reputable company and shall designate as the beneficiary the estate of the particular co-partner. It is understood that as an alternative requirement to the obtaining and keeping of such a policy, the co-partner may keep on hand at all times cash or liquid assets the reasonable market value of which exceeds the said obligations by the said sum of \$3,000.00.

11. If it appears upon the death of any co-partner that there are insufficient moneys in the estate of such co-partner to satisfy all valid claims

against his or her said estate, taxes in connection therewith, and all expenses and charges of administration therein, then and in that event the surviving co-partners shall be entitled, at their option, to advance to the said estate sufficient moneys to liquidate any and all such claims or expenses, and to thereafter deduct the amount so advanced, with interest thereon at the rate of six per cent, from any and all profits payable upon the interest of the deceased partner, by whomsoever owned, until the said advances are fully repaid.

12. The term of this co-partnership shall be one year from date hereof, it being agreed, however, that if no co-partner indicates his desire to dissolve this co-partnership by notice in writing given to the co-partnership at its principal office in Oakland, at least thirty days before the termination of the said year, or any following year, as in this paragraph provided, then and in that event this co-partnership shall be continued from year to year thereafter.

13. If any co-partner or co-partners shall elect to retire from the co-partnership before the end of the term fixed for its duration, then and in that event such party shall give to the other parties notice in writing of his election to retire, and such retirement shall then be effective on the last day of the next succeeding calendar month, which day shall occur more than thirty days from the delivery of said notice, to the principal office of the business of this co-partnership in Oakland, and the said

co-partnership shall thereupon be dissolved, provided, however, that the other co-partners, if their combined ownership is more than fifty per cent of the business, may at their election continue the said business, provided, that notice in writing of such election shall be served upon the retiring co-partner or co-partners, and that as a condition thereof payment shall be made to the retiring co-partner or co-partners of the following amounts and at the following times:—sixty days after the effective date of the retirement, a sum equal to ten per cent of the book value of his or her proportionate interest in the business, as determined on the effective date of retirement; a further sum equal to ninety per cent of his proportionate interest of the book value of the business as of said date to be paid within a period of five years from the effective date of retirement, together with interest on the unpaid portions thereof at the rate of five per cent per annum, it being agreed that not less than one-fifth of said sum shall be paid each year thereafter, provided, further that if the said business shall be terminated or dissolved after the effective date of any such withdrawal and prior to the completion of said payments, then any such retiring co-partner shall be entitled to participate as a general creditor in the assets of said co-partnership to the extent of any unpaid balance. Each co-partner hereby expressly agrees to accept and receive an amount as above fixed, paid in the manner above specified, as and for his full share and interest in the co-partnership, in the event of his

withdrawal, and that the interest of such retiring co-partners shall be so divided among the remaining co-partners that their relative interests shall remain the same.

14. It is further agreed that in the event co-partners owning more than fifty per cent of the business elect to continue the operation of the business at the end of any yearly period, and other interests owning less than fifty per cent of the business desire to withdraw or discontinue, and have indicated such desire in the manner herein specified in Paragraph "12," then and in that event the co-partners so desiring may continue the business and pay off the other co-partners in the same manner and at the same rates and in the same amounts as provided for retiring co-partners, in the paragraph immediately next preceding; the last day of the calendar year to be considered as the effective date of retirement.

15. Any retirement or election to discontinue hereunder, as herein provided, may be retracted by the party so signifying by a notice in writing given to the co-partnership at its principal office in Oakland at any time more than five days before the effective date of such election.

16. Any retiring co-partner, within the meaning of Paragraphs "13" and "14" above, after the effective date of such withdrawal or retirement, shall be deemed to have assigned, transferred and set over unto the continuing parties all of his right, title and interest in and to the said co-partnership,

the good will, firm name, and any and all other assets thereof, without any further act upon the part of such retiring party, and he or she further agrees to do all further acts and execute all documents or papers which may be deemed necessary or proper to accomplish the same, without charge or cost.

17. Such retiring co-partner shall not at any time solicit or deal with in a competitive capacity, any of the customers or business associates of the partnership, or of any of the continuing parties, and shall not at any time disclose to any person, firm or corporation the names of any customers or business associates of the co-partnership, or any of its transactions, and such retiring co-partner shall not, at any time, use the firm name, nor either in conjunction with his own name, or otherwise, use the words "formerly of Cochran & Celli," or any other combination of words containing the firm name, and such retiring co-partner further agrees that he will not own, manage or engage in any business in competition with the co-partnership business within the County of Alameda, State of California, so long as the said co-partnership shall continue and exist under the same firm name and have as members the same co-partners, or any of them, or their successors and assigns, or a corporation which shall be a successor or assign, provided, however, that this restriction shall not exceed the period of fifteen years.

18. If any co-partner shall be guilty of mis-

conduct of such a character as to render it impracticable for the co-partners to carry on the partnership business together, then and in that event the offending co-partner may be expelled from the co-partnership by the unanimous vote of the remaining members of the co-partnership upon payment to him in the same manner and at the same times and in the same amounts as a retiring partner under Paragraph "13" above, it being understood that the effective date of said expulsion shall be the last day of a calendar month next occurring which is not less than thirty days from the date of notice thereof given to the offending co-partner, provided, however, that if the ownership of the offending co-partner in the partnership business is more than fifty per cent thereof, the co-partnership shall be dissolved. Any such expelled party shall be bound by the same terms, conditions, covenants and restrictions as hereinabove set forth for the retiring co-partner in Paragraphs "16" and "17" hereof.

19. It is expressly understood and agreed that none of the co-partners, other than as expressly set forth herein, shall have the power and authority to bind his or her co-partners, or to sell or assign or transfer his or her co-partnership interest therein.

20. It is expressly agreed that no co-partner shall engage in or become directly interested in, at any time during the existence of this co-partnership, any business or undertaking which gives him

or her an interest adverse to that of said co-partnership, (except any such interest as shall exist as of date hereof), without written consent of the other co-partners first obtained.

21. It is further understood and agreed that there shall be kept at all times during the continuance of this co-partnership just and true books of account wherein shall be set down any and all moneys received or expended in or about said business, and also all property, real or personal, bought, sold or exchanged by reason of or on account of said business, and all matters and things whatsoever concerning said business and management thereof, or in any way appertaining thereto, access to which said books of account may be had by any of the co-partners at any reasonable time during said co-partnership and while said respective co-partners own and possess a co-partnership interest in said business under and by virtue of the terms of this contract and agreement.

22. Any co-partner who shall violate any of the terms, provisions and conditions of this agreement shall, in addition to being subjected to the other remedies, liabilities and obligations herein or by law imposed upon him, thereafter, keep and save harmless the co-partnership property and shall indemnify the other co-partners from any and all claims and actions which may arise out of or by reason of such a violation of any of the terms, provisions and conditions hereof.

23. Upon the termination of this co-partnership

at the expiration of its term, or upon the happening of any contingency requiring dissolution, as otherwise hereinabove provided for, the parties designated as "Managers" shall then become Trustees for all the co-partners and they shall thereupon proceed to liquidate the assets of the co-partnership as rapidly as is reasonable and practicable under the circumstances, and shall as often as is practicable distribute the proceeds of such liquidation to the co-partners in accordance with their respective interests therein.

24. It is hereby agreed that all real assets of this co-partnership shall immediately be transferred to and held in the names of Bernard Celli, Jr., and Sidney Elmer Cochran, in trust for the benefit of this co-partnership and/or its successors or assigns, and subject to the terms and conditions of this agreement; that such successor or substituted Trustees may be designated as, and substituted in the place and stead of above named Trustees or either of them as and when deemed necessary by the beneficiaries of the trust; and said Trustees and each of them hereby agree to do all things necessary and proper to accomplish the purposes herein expressed, without cost or charge other than for reasonable reimbursement for expenses incurred.

25. This agreement shall be and is binding upon the heirs, executors, administrators, successors and assigns of each and all of the parties hereto.

In Witness Whereof, the parties hereto have unto an original hereof, and to six copies, affixed their names and seals the day and year hereinabove first written.

/s/ J. E. COCHRAN,

/s/ MABEL COCHRAN,

/s/ BERNARDO CELLI, SR.,

/s/ ANNA CELLI,

/s/ BERNARDO CELLI, JR.,

/s/ LLOYD CELLI,

/s/ S. E. COCHRAN,

/s/ BERNICE COCHRAN,

/s/ WINIFRED COCHRAN.

EXHIBIT No. 8

Amendment to Articles of Co-Partnership

Agreement made this 28th day of February, 1945, between J. E. Cochran, Mabel Cochran, Sidney Elmer Cochran, Winifred Cochran Irwin, Bernice Cochran Johnson, Donald Robert Cochran, Bernardo Celli, Sr., Anna Celli, Bernardo Celli, Jr., and Lloyd Celli, all of the County of Alameda, State of California;

Whereas, Articles of Co-partnership were made January 1, 1938, by all of the parties hereto excepting Donald Robert Cochran, for the ownership and operation of the business of Cochran & Celli as a partnership; and

Whereas, paragraph numbered 4 of said agreement or articles of co-partnership permits internal transfers of shares and interests in said co-partnership among the partners, and also provides for the admission of Donald Robert Cochran as a partner without interruption of the business of Cochran & Celli; and

Whereas, Winifred Cochran, mentioned in said articles of co-partnership, is the same person as Winifred Cochran Irwin, one of the partners and a party hereto; and

Whereas, Bernice M. Cochran, mentioned in said articles of co-partnership, is the same person as Bernice Cochran Johnson, one of the partners and a party hereto; and

Whereas, Donald Robert Cochran was admitted as a partner in the year 1941, causing a temporary dissolution of said partnership at the time of his admission and a reorganization and continuation of the business of Cochran & Celli by reason of his admission as a partner; and

Whereas, there was no formal dissolution of said partnership at the time of the so-called admission of Donald Robert Cochran as a partner but, on the other hand, a reorganization of a new partnership among the same parties, adding to the association of the parties, Donald Robert Cochran as a partner; and

Whereas, preceding the reorganization and subsequent to such reorganization, there have been partial internal transfers of partnership shares and interests among the partners, as reflected in the

books of such partnership by adjustments in the appropriate proprietorship accounts of the partners; and

Whereas, it is now the desire and the intention of the parties to affirm said admission of Donald Robert Cochran and said transfers and adjustments, and to clarify the intentions of the parties from the inception of said co-partnership and said reorganization, and amend said articles of co-partnership;

It Is, Therefore, Agreed:

1. It is understood that the preamble aforesaid to this agreement expresses the intentions of the parties hereto as though part of the operating provisions hereof.

2. It is understood that the nature of the "interest" of each partner of Cochran & Celli, reflected in terms of percentages in the articles of co-partnership, dated January 1, 1938, and herein, is the partner's share of the profits and earned surplus of the partnership business, and the "interest" of a partner shall not be deemed to have any necessary relationship to the proprietary share of net worth of a partner.

3. That the procedures provided in paragraph numbered 4 of said articles of co-partnership, dated January 1, 1938, notwithstanding, the interests of the parties hereto in Cochran & Celli since January 1, 1938, are declared to be in the following adjusted percentages:

1938

J. E. Cochran	18.91
Mabel Cochran	10.33
Sidney Elmer Cochran	6.92
Winifred Cochran	6.92
Bernice Cochran Johnson	6.92
Bernardo Celli, Sr.	18.42
Anna Celli	11.36
Bernardo Celli, Jr.	10.11
Lloyd Celli	10.11

1939

J. E. Cochran	17.48
Mabel Cochran	10.80
Sidney Elmer Cochran	7.24
Winifred Cochran	7.24
Bernice Cochran Johnson	7.24
Bernardo Celli, Sr.	14.70
Anna Celli	9.90
Bernardo Celli, Jr.	12.70
Lloyd Celli	12.70

1940

J. E. Cochran	14.286
Mabel Cochran	14.285
Sidney E. Cochran	7.143
Winifred Cochran	7.143
Bernice Cochran Johnson	7.143
B. Celli, Sr.	13.67
Anna Celli	10.21
B. Celli, Jr.	13.06
Lloyd Celli	13.06

1941

J. E. Cochran	13.333
Mabel Cochran	13.333
Sidney E. Cochran	6.667
Winifred Cochran	6.667
Bernice Cochran Johnson	6.667
Donald Robert Cochran	3.333
B. Celli, Sr.	13.14
Anna Celli	10.40
B. Celli, Jr.	13.23
Lloyd Celli	13.23

1942

J. E. Cochran	12.5
Mabel Cochran	12.5
Sidney E. Cochran	6.25
Winifred Cochran Irwin	6.25
Bernice Cochran Johnson	6.25
Donald Robert Cochran	6.25
B. Celli, Sr.	12.5
Anna Celli	12.5
B. Celli, Jr.	12.5
Lloyd Celli	12.5

1943

J. E. Cochran	9.0
Mabel Cochran	9.0
Sidney E. Cochran	8.0
Winifred Cochran Irwin	8.0
Bernice Cochran Johnson	8.0
Donald Robert Cochran	8.0
B. Celli, Sr.	12.5
Anna Celli	12.5
B. Celli, Jr.	12.5
Lloyd Celli	12.5

4. Donald Robert Cochran agrees that upon his association with all of the other parties hereto as a partner in the partnership of Cochran & Celli, and ever since and hereafter, he has been, now is and will be bound by all of the provisions of said articles of co-partnership just as though he were an original signatory thereto. It is not meant hereby, however, that there was no legal interruption of the existence of the partnership of Cochran & Celli as constituted January 1, 1938, at the time of the association of Donald Robert Cochran with the other parties hereto in the year 1941. On the other hand, it is understood that a new partnership was formed on the terms and conditions of said articles of co-partnership when Donald Robert Cochran became a partner in the partnership of Cochran & Celli.

5. The requirement in paragraph numbered 4 of said articles of co-partnership providing that internal transfers of partnership interests shall be accomplished by an instrument in writing signed by the transferor and executed by the transferee, and that an executed copy of such instrument shall be attached to and made part of said articles of co-partnership, is hereby waived with respect to all of such transfers and adjustments made prior to January 1, 1944.

6. There is hereby substituted for paragraph numbered 8 of said articles of co-partnership as though originally therein, and this amendment shall be binding upon the parties hereto, the following:

“It is hereby agreed that upon the death of any of the partners of Cochran & Celli, the business of such partnership shall not be interrupted by reason of such death, but such business shall be continued and conducted by the surviving partners. It is, nevertheless, understood that the death of any of the partners shall dissolve and terminate the existence of the partnership. However, the business of said partnership shall be continued for the purposes provided for herein. For the purpose of continuing the operation of said business without interruption and preserving the value thereof, the surviving partners shall not be required to wind up and settle the partnership business as provided in California Probate Code, Section 571, but may continue the operation of said business without regard to California Probate Code, Section 571, until such time as it appears that the purposes provided for herein cannot be accomplished. If after the death of any of the partners and the dissolution of the partnership by reason of such death, it appears that the share and interest, or any part thereof, of the deceased partner has been devised or bequeathed to any of the surviving partners, in such case, a new partnership shall be organized without interruption of the business, however, and in accordance with the provisions of this agreement, adjusting any increase in the proprietorship share and interest of any surviving partner or partners who may be the devisee or legatee of such deceased partner. If upon the death of any partner and the dissolution of the partner-

ship by reason thereof, it appears that the deceased partner has attempted to devise or bequeath the proprietorship share and interest of such deceased partner to any person or persons other than a partner herein, in such case the business shall be reorganized (and continued) by the formation of a limited partnership under the laws of the State of California, and such devisee or legatee (singular or plural as the case may be) to whom the deceased partner has devised or bequeathed his proprietary share and interest in the partnership, shall, if agreed upon, become a limited partner or partners and the surviving partners shall be the general partners. It is expressly understood that none of the partners shall devise or bequeath their interest in any good will attaching to the partnership business of Cochran & Celli but that in the case of the death of any partner or partners, the surviving partners shall be and become the sole and exclusive owners of any good will of said business, and good will shall not be or become part of the value or assets of the estate of any such deceased partner or partners.”

7. In order to clarify the intention of the parties as expressed in paragraph numbered 24 of said articles of co-partnership, said articles of co-partnership are hereby amended by substituting for paragraph numbered 24 as though originally therein, the following language, to wit:

“In order to facilitate the holding and transfer of the title of the partners to all real property of the co-partnership, it is hereby agreed that all real

property of this co-partnership shall immediately be transferred to and held in the names of Bernardo Celli, Jr., and Sidney Elmer Cochran, in trust, for the benefit of this co-partnership, subject to the terms and conditions of this agreement. Successor or substituted trustees may be appointed and substituted in the place and stead of the above-named trustees, or either of them, by a majority of the partners (at least two members of the Celli group being in such majority) as, if and when deemed necessary. Said trustees, and each of them, are hereby empowered and agree to do all things necessary and proper to accomplish the purposes herein expressed; however, in acting, said trustees, although nominal trustees, shall at all times, nevertheless, be regarded as partners of this co-partnership with the powers and duties aforesaid."

8. It is agreed that said trustees, their successors and assigns shall hold title to the real property of the partnership in behalf of Donald Robert Cochran as his interest may appear, as well as for all of the other partners thereof.

9. That certain instrument in writing, dated January 1, 1938, entitled "Declaration of Trust," which is by its terms a holding agreement, signed by Bernardo Celli, Jr., and S. E. Cochran, and approved and made binding upon the wives of said parties by virtue of their written consent, viz., the consent of Melva Celli and Marian Cochran, which agreement was made pursuant to paragraph numbered 24 of said articles of co-partnership, is

hereby made subject to and shall be controlled by paragraphs numbered 7 and 8 aforesaid of this agreement amending said articles of co-partnership.

In Witness Whereof, the parties hereto have set their hands the day and year first above written.

/s/ J. E. COCHRAN,

/s/ MABEL COCHRAN,

/s/ SIDNEY ELMER COCHRAN,

/s/ WINIFRED COCHRAN
IRWIN,

/s/ BERNICE COCHRAN
JOHNSON,

/s/ DONALD ROBERT
COCHRAN,

/s/ BERNARDO CELLI, SR.,

/s/ ANNA CELLI,

/s/ BERNARDO CELLI, JR.,

/s/ LLOYD CELLI.

EXHIBIT No. 9

Declaration of Trust

We, Bernardo Celli, Jr., and Sidney Elmer Cochran, and each of us, do hereby expressly declare that we have received and do now hold that certain real property as fully described in Exhibit "A" attached hereto and made a part hereof for the use and benefit of Cochran & Celli, a co-partnership, its successors and assigns, and subject to

all the terms and conditions of that certain agreement of co-partnership made and entered into on the 1st day of January, 1938, by and between J. E. Cochran, Mabel Cochran, Bernice M. Cochran, Winifred Cochran, Sidney Elmer Cochran, Bernardo Celli, Sr.; Anna Celli, Bernardo Celli, Jr., and Lloyd Celli.

Dated this 1st day of January, 1938.

/s/ BERNARDO CELLI, JR.,

/s/ S. E. COCHRAN.

We, the undersigned, being the respective wives of the aforesaid Bernardo Celli, Jr., and Sidney Elmer Cochran, do hereby expressly acknowledge that the real property as aforesaid mentioned, and described in Exhibit "A" as attached hereto is held by our said husbands in trust for the purposes as above set forth, and we do expressly agree that we, and each of us, will execute any and all documents, instruments, and papers required of us for the purpose of carrying out or furthering the trusts aforesaid without charge, cost or expense, except for reasonable reimbursement for sums expended to this end.

Dated January 1st, 1938.

/s/ MELVA CELLI, JR.,

Wife of Bernardo Celli, Jr.;

/s/ MARIAN COCHRAN,

Wife of Sidney Elmer
Cochran.

EXHIBIT "A"

All that certain real property situate, lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to wit:

Parcel 1: Beginning at a point on the Northwestern line of 9th Avenue, distant thereon Southwesterly 75 feet from the point of intersection thereof with the Southwestern line of East 11th Street; running thence Southwesterly along said line of 9th Avenue, 75 feet; thence Northwesterly parallel with East 11th Street, 150 feet; thence Northeasterly parallel with 9th Avenue, 75 feet; thence Southeasterly parallel with East 11th Street, 150 feet to the point of beginning.

Being a portion of Block #18, as per Higley's Map of Clinton of record in Liber B of Deeds, page 537, in the office of the County Recorder of Alameda County.

Parcel 2: Beginning at the intersection of the Southwestern line of East 11th Street, formerly Jackson Street, with the Northwestern line of 9th Avenue, formerly Clay Street, as the said Streets are shown upon the Map hereinafter referred to; running thence Southwesterly along said line of 9th Avenue 75 feet; thence at right angles Northwesterly 150 feet; thence at right angles Northeasterly 75 feet to the said Southwestern line of East 11th Street; and thence Southeasterly along said last-named line 150 feet to the point of beginning.

Being a portion of Block #18, as the said Block is delineated and so designated upon Higley's Map

of Clinton, of record in Liber "B" of Deeds, page 537, in the office of the County Recorder of the said County of Alameda.

Parcel 3: Beginning at a point on the Northeastern line of East 11th Street, distant thereon Northwesterly 150 feet from the intersection thereof with the Northwestern line of 9th Avenue; running thence Northwesterly along said line of East 11th Street, 50 feet; thence at right angles Northeasterly 150 feet; thence at right angles Southeasterly 50 feet; and thence at right angles Southwesterly 150 feet to the point of beginning.

Being a portion of Block #34 as said Block is delineated and so designated upon Higley's Map of Clinton of record in Liber "B" of Deeds, at page 537, in the office of the County Recorder of Alameda County.

Parcel 4: Beginning at the intersection of the Southeastern line of 8th Avenue, with the Northeastern line of East 11th Street; running thence Northeasterly along said line of 8th Avenue, 113 feet; thence Southeasterly parallel with said line of East 11th Street, 100 feet; thence Southwesterly parallel with said line of 8th Avenue 113 feet to the Northeastern line of East 11th Street, and thence Northwesterly along said last-named line 100 feet to the point of beginning.

Being a portion of Block #34, as the said Block is delineated and so designated upon Higley's Map of Clinton of record in Liber "B" of Deeds, at page 537, in the office of the County Recorder of the County of Alameda.

Parcel 5: Beginning at a point on the Southeastern line of 8th Avenue, distant thereon Northeasterly 113 feet from the intersection thereof with the Northeastern line of East 11th Street; running thence Northeasterly along said line of 8th Avenue 37 feet; thence Southeasterly parallel with said line of East 11th Street 100 feet; thence Southwesterly parallel with said line of 8th Avenue 37 feet; and thence Northwesterly parallel with said line of East 11th Street, 100 feet to the point of beginning.

Being a portion of Block #34, as the said Block is delineated and so designated upon Higley's Map of Clinton of record in Liber "B" of Deeds, at page 537, in the office of the County Recorder of Alameda County.

Parcel 6: Beginning at a point on the Northern line of 5th Street, distant thereon 67.11 feet Easterly from the point of intersection thereof with the Eastern line of Broadway, said point of beginning being also the Southeastern corner of that certain parcel of land conveyed by J. R. Cochran, B. Celli, et al., to Eugene Moffat Investment Company, a corporation, by deed dated November 9, 1923, recorded in Liber 530 of Official Records, at page 441; running thence Easterly along said line of 5th Street 24 feet 8½ inches; thence at right angles Northerly 50 feet; thence at right angles Easterly 10.38 feet; thence at right angles Northerly 40 feet; thence at right angles Westerly 25 feet; thence at right angles Southerly 40 feet; thence at right angles Westerly 10.09 feet to the Eastern line of

said parcel of land conveyed to said Eugene Moffat Investment Company, by the deed hereinabove referred to; thence Southerly along said last-named line 50 feet to the point of beginning.

Being a portion of Lots Numbered 1, 2, 27 and 28 in Block #55, as said Lots and Block are laid down and delineated upon Kellersberger's Map of Oakland, on file and of record in the office of the County Recorder of Alameda County.

Parcel 7: Beginning at a point on the Northern line of 5th Street, distant thereon 91.82 feet Easterly from the point of intersection thereof with the Eastern line of Broadway; running thence Easterly along said line of 5th Street, 133.18 feet; thence at right angles Northerly 100 feet; thence at right angles Westerly 125 feet; thence at right angles Southerly 10 feet; thence at right angles Easterly 2.20 feet; thence at right angles Southerly 40 feet; thence at right angles Westerly 10.38 feet; thence at right angles Southerly 50 feet to the point of beginning.

Being Lots numbered 23, 24, 25 and 26, and portions of Lots numbered 27 and 28 in Block #55, as said Lots and Block are laid down and delineated upon Kellersberger's Map of Oakland on file and of record in the office of the County Recorder of Alameda County.

Parcel 8: Lots numbered 12 and 13 in Block #55, as said Lots and Block are laid down and delineated upon Kellersberger's Map of Oakland on file and of record in the office of the County Recorder of Alameda County.

Parcel 9: Beginning at a point bearing North 17 degrees, 11' 05" East 75.54 feet from the most Northerly corner of that certain .596 acre parcel of land described in the Deed from Realty Syndicate Company, a corporation, to Edward T. Joste and Annie Joste, his wife, dated July 11th, 1919, and recorded in Liber 2801 of Deeds, at page 1, Alameda County Records; thence North 54 degrees, 06' 30" East 100 feet; thence North 35 degrees, 53' 30" West 53.30 feet; thence South 54 degrees, 06' 30" West 100 feet, more or less, to the Northeasterly line of Laurel Avenue, as said Laurel Avenue is described in the Deed from Realty Syndicate Company, a corporation, to the City of Oakland, a municipal corporation, dated March 19th, 1921, and recorded in Liber 3058 of Deeds, page 456; and thence Southeasterly on the arc of circle (having a radius of 462.16 feet) along said Laurel Avenue 50 feet, more or less, to the point of beginning.

Being a portion of that certain 267.46 acre piece or parcel of land firstly described in that certain Deed from John H. Spring and Celina D. Spring, his wife, and Charlotte B. Spring to the Realty Syndicate, a corporation, dated June 2nd, 1909, and recorded June 9th, 1909, in Liber 1610 of Deeds at page 123 in the office of the County Recorder of said County of Alameda, and

Being a portion of that certain 25.48 acre piece or parcel of land described in that certain Deed from George Sterling and Carrie R. Sterling, his wife, to the Realty Syndicate, a corporation, dated

May 26, 1903, and recorded August 18, 1903, in Liber 923 of Deeds at page 273 in the office of the County Recorder of said County of Alameda, State of California.

Parcel 10: Commencing at the intersection of the Northeasterly line of Wallace Street, with the Northwesterly line of 19th Avenue, as said Street and Avenue are shown on the Map hereinafter described; thence along the Northwesterly line of 19th Avenue North 36 degrees, 47' East, 39.10 feet to a point where said line is intersected by a line drawn parallel to and distant 100 feet at right angles Easterly from the West line of Lot 12 hereinafter described; thence North 24 degrees, 37' West parallel to and distant 100 feet at right angles from the Westerly line of Lot 12, 90 feet; thence South 65 degrees, 23' West 40 feet; thence South 24 degrees, 37' East, 96 feet, more or less, to the Northeast line of Wallace Street; thence along said line Southeasterly to the point of beginning.

Being a portion of Lot #12, as the said Lot is laid down and delineated upon that certain Map entitled "Map of Portion of Highland Park," etc., filed April 28th, 1879, in the office of the County Recorder of Alameda County.

Cochran & Celli

Annual Closing Balances in Investment Accounts Transcribed from General Ledger

	Dec. 31, 1937	Dec. 31, 1938	Dec. 31, 1939	Dec. 31, 1940	Dec. 31, 1941	Dec. 31, 1942	Dec. 31, 1943	Dec. 31, 1944
J. E. Cochran	\$91,842.88	\$87,023.86	\$89,722.86	\$98,782.86	\$106,822.45	\$95,908.80	\$84,446.97	\$73,549.33
Mabel Cochran	50,162.80	53,748.59	58,687.22	71,262.78	94,957.61	89,250.72	86,716.59	86,182.03
Sidney E. Cochran	33,636.42	36,048.52	39,221.81	47,283.10	54,531.48	63,584.03	75,943.88	89,919.96
Bernice C. Johnson	33,636.42	36,038.52	39,296.90	47,455.08	54,681.51	64,157.47	75,147.72	85,015.36
Winifred Irwin	—	—	—	—	54,296.14	63,251.62	74,809.58	90,787.76
Donald R. Cochran	—	—	—	—	25,923.26	53,084.86	74,225.25	86,949.04
Total Cochran Group	\$242,914.94	\$248,898.01	\$266,206.23	\$316,128.41	\$391,212.45	\$429,237.50	\$471,289.99	\$512,403.58
Bernardo Celli, Sr.	87,528.52	71,237.95	70,278.66	81,294.45	92,219.20	94,310.54	97,536.94	101,477.23
Anna Celli	53,972.84	47,916.17	52,443.25	64,289.80	82,772.23	95,305.88	107,994.67	121,250.80
Bernardo Celli, Jr.	48,052.04	61,561.47	67,127.54	81,836.21	103,388.15	110,842.36	122,176.59	133,909.40
Lloyd J. Celli	48,052.04	61,561.47	67,154.66	81,804.08	102,739.42	109,046.48	120,851.41	133,777.94
Total Celli Group	\$237,605.44	\$242,277.06	\$257,004.11	\$309,224.54	\$381,119.00	\$409,505.26	\$448,559.61	\$490,415.37
Total	\$480,520.38	\$491,175.07	\$523,210.34	\$625,352.95	\$772,331.45	\$838,742.76	\$919,849.60	\$1,002,818.95

EXHIBIT No. 11

Cochran & Celli

Statement of Partners' Earnings for Services Rendered
As Shown on Salary Accounts of Partnership

	1938	1939	1940	1941	1942	1943	1944
Bernardo Celli, Sr.	\$3600.00	\$3600.00	\$3600.00	\$4550.00	\$6712.50	\$4800.00	\$4800.00
J. E. Cochran	3600.00	3600.00	3600.00	4300.00	4800.00	4800.00	4800.00
B. Celli, Jr.	3900.00	3900.00	5200.00	6200.00	4200.00	4200.00	4200.00
Lloyd J. Celli	1200.00	1800.00	2100.00	4625.00	337.00	—	—
Sidney E. Cochran	2400.00	2700.00	4200.00	4600.00	3662.50	3900.00	—
Donald R. Cochran	—	—	61.20	95.00	2050.00	2937.50	3487.00

EXHIBIT No. 12

Summary of Annual Withdrawals Charged to Individual Accounts

These amounts are in addition to withdrawals for
services rendered as shown in Exhibit 11 and trans-
fers entered as gifts as shown in Exhibits 1 to 6.

Date	Bernardo Celli, Sr.	Anna Celli	Bernardo Celli, Jr.	Lloyd Celli	J. E. Cochran	Mabel Cochran	Sidney Cochran	Donald Cochran	Winifred Cochran Irwin	Bernice Cochran Johnson
1938— January thru December	\$12,684.60	None	None	None	\$11,383.14	None	None	None	None	None
1939— January thru December	7,681.31	None	\$ 241.39	\$ 214.27	5,294.27	None	\$1,627.42	None	\$71.79	\$52.33
1940— January thru December	4,845.37	None	444.72	503.97	7,515.57	None	226.50	admitted to partnership	220.64	129.61
1941— January thru December	12,427.08	None	1,959.84	2,576.44	11,655.24	None	599.92	None	896.75	621.87
1942— January thru December	15,668.14	\$5,225.83	10,305.26	11,452.41	12,673.13	\$7,466.36	3,827.19	1,718.14	3,924.26	3,495.29
1943— January thru December	19,006.81	9,544.42	10,898.98	10,428.28	15,469.75	6,542.05	5,369.40	6,588.86	6,831.29	6,739.00
1944— January thru December	18,122.43	8,806.59	10,329.91	9,136.19	14,782.70	4,419.72	6,144.06	7,396.35	4,141.96	10,252.50

EXHIBIT No. 13

Summary of Annual Withdrawals
from
Bernice Cochran Johnson Account

Year	For Income Taxes	Other than for Income Taxes	Total Withdrawals
1938	None	None	None
1939			
January thru December	\$ 52.33	None	\$ 52.33
1940			
January thru December	129.61	None	129.61
1941			
January thru December	621.87	\$4,000.00*	4,621.87*
1942			
January thru December	2,314.04	5,089.74*	7,403.78*
1943			
January thru December	5,429.58	3,809.42*	9,239.00*
1944			
January thru December	3,763.50	6,489.00	10,252.50

* Includes gift by check to Donald Robert Cochran as shown in Exhibit 4.

EXHIBIT No. 14

Summary of Annual Withdrawals
from
Winifred Cochran Irwin Account

Year	For Income Taxes	Other than for Income Taxes	Total Withdrawals
1938	None	None	None
1939			
January thru December	\$ 71.79	None	\$ 71.79
1940			
January thru December	220.64	None	220.64
1941			
January thru December	896.75	\$4,000.00*	4,896.75*
1942			
January thru December	2,890.96	5,033.30*	7,924.26*
1943			
January thru December	5,079.32	4,251.97*	9,331.29*
1944			
January thru December	3,020.86	1,121.10	4,141.96

* Includes gifts by check to Donald Robert Cochran as shown in Exhibit 5.

EXHIBIT No. 15

Cochran & Celli

Balance Sheet

December 31, 1938

(All Divisions Combined)

Current:		Assets	
Cash on Hand and in Bank.....			\$ 28,402.69
Contracts in Transit—Finance Companies..			12,169.44
Receivables:			
Notes Receivable	\$107,682.10		
Accounts Receivable	95,542.07		
Accounts Payable—Debit Balances	4,091.19		207,315.36
Inventories:			
New Cars and Freight and Handling	47,375.97		
Metro Bodies	12,550.61		
Used and Repossessed Cars	31,280.00		
Parts	31,796.32		
Accessories	6,295.41		
New Tires and Tubes	12,311.09		
Body and Trim Materials	39,695.79		
Paint Materials	1,303.83		
Gas, Oil and Grease	1,230.75		
Work in Process — labor	1,472.61		
Other Sundry Inventories	2,364.58		187,676.96
Securities			1,902.80
Prepaid Expenses:			
Taxes	2,136.12		
Insurance	1,904.37		
Advertising	569.00		
Sundry	284.14		4,893.63
Total Current Assets			\$442,360.88
Fixed Assets:			
Land	87,809.48		
Buildings	105,669.59		
Equipment	98,934.64		
Leasehold Improvements	2,375.78		294,789.49
Deferred Assets:			
Deposits on Contracts	929.00		
Repossession Reserves—Finance			
Companies	9,869.11		
Advances to Employees	3,210.16		
Sundry Investments, less depreciation	7,010.50		21,018.77
			<u>\$758,169.14</u>

Cochran & Celli

Balance Sheet

December 31, 1938

(All Divisions Combined)

Liabilities

Current:

Accounts Payable:

Trade Creditors	\$ 34,899.25	
Accounts Receivable—Credit Balances	22,079.29	
Finance Charges Collected	913.87	
Service Contract Deposits	111.94	\$ 58,004.35

Notes Payable:

New Cars Financed	12,029.90	
Anglo California National Bank— Unsecured	25,000.00	37,029.90

Accrued Liabilities:

Interest	15.36	
Payroll and Commissions	1,928.36	
Insurance	943.44	
Taxes	16,443.75	
Promotional Expense	225.00	19,555.91

Total Current Liabilities

\$114,590.16

Mortgages Payable

35,000.00

Reserves:

Bad Debts	6,797.54	
Depreciation of Buildings	46,683.53	
Depreciation of Equipment	57,408.89	
Amortization of Improvements	267.95	
Used and Repossessed Car Expenses	6,256.00	117,413.91

Net Worth

Investment — January 1, 1938	480,520.38
Net Profit for 1938	34,712.43

\$515,232.81

Withdrawals for 1938	24,067.74
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Investment — December 31, 1938

491,165.07

\$758,169.14

EXHIBIT No. 16

Cochran & Celli

Balance Sheet

December 31, 1939

(All Divisions Combined)

Assets

Current:

Cash on Hand and in Bank		\$ 39,522.07
Contracts in Transit—Finance Companies..		14,572.18
Notes and Accounts Receivable:		
Notes Receivable	\$ 97,376.07	
Accounts Receivable	100,124.30	
Accounts Payable — debit balances	2,363.35	199,863.72

Inventories:

New Cars and Freight and Handling	49,780.60	
Metro Bodies	11,566.11	
Used and Repossessed Cars	36,489.16	
Parts	37,664.51	
Accessories	7,078.57	
New Tires and Tubes	7,943.02	
Used Tires and Tubes	994.10	
Body and Trim Materials	45,523.31	
Gas, Oil and Grease	1,099.63	
Work in Process — labor	3,273.70	
Other Sundry Inventories	2,309.24	203,721.95

Securities	289.00
Discount Receivable on Car Purchases	6,142.50

Prepaid Expenses:

Taxes	2,426.59	
Insurance	1,909.16	
Advertising	531.00	
Sundry	260.76	5,127.51

Total Current Assets	\$469,238.93
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Fixed Assets:

Land	93,066.40	
Buildings	120,324.35	
Improvements	3,089.47	
Equipment	108,493.44	324,973.66

Deferred Assets:

Deposits on Contracts	854.00	
Repossession Reserves—finance companies....	17,622.46	
Advances to Employees	2,335.69	
Sundry Investments—less depreciation	13,200.91	34,013.06

\$828,225.65

Cochran & Celli

Balance Sheet

December 31, 1939

(All Divisions Combined)

Liabilities

Current:

Accounts Payable:

Trade Creditors	\$ 29,708.37	
Accounts Receivable—credit balances	28,998.33	
Finance Charges Collected	746.96	
Service Contract Deposits	2,733.29	\$ 62,186.95

Notes Payable:

New Cars Financed	39,935.55	
Anglo Calif. National Bank—Unsecured..	18,000.00	57,935.55

Accrued Liabilities:

Interest	22.99	
Payroll	196.06	
Insurance	2,036.27	
Taxes	17,682.10	
Promotional Expense	250.00	20,187.42

Total Current Liabilities

\$140,309.92

Mortgage Payable

35,000.00

Reserves:

Bad Debts	6,870.00	
Depreciation of Buildings	50,719.28	
Depreciation of Improvements	446.75	
Depreciation of Equipment	64,371.53	
Used and Repossessed Car Expenses	7,297.83	129,705.39

Net Worth

Investment — January 1, 1939	491,165.07
Net Profit for 1939	45,728.05

\$536,893.12

Withdrawals for 1939	13,682.78
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Investment — December 31, 1939	
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\$523,210.34

\$828,225.65

EXHIBIT No. 17

Cochran & Celli

Balance Sheet

December 31, 1940

(All Divisions Combined)

Current:		Assets	
Cash on Hand and in Bank			\$ 20,913.96
Contracts in Transit—finance companies..			27,399.92
Notes and Accounts Receivable:			
Notes Receivable	\$120,461.83		
Accounts Receivable	135,424.81		
Accounts Payable—debit balances	2,362.26		258,248.90
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Inventories:			
New Cars and Freight and Handling	57,024.19		
Special Bodies and Cabs	8,790.67		
Used and Repossessed Cars	51,276.78		
Parts	45,565.96		
Accessories	11,386.11		
New Tires and Tubes	15,986.49		
Recapped Tires	1,389.03		
Body and Trim Materials	47,571.89		
Gas, Oil and Grease	697.01		
Work in Process — Labor	3,279.70		
Other Sundry Inventories	2,370.14		245,337.97
<hr/>			
Securities			457.00
Discount Receivable on Car Purchases			9,292.50
Prepaid Expenses:			
Taxes	2,635.53		
Insurance	3,228.50		
Advertising	474.00		6,338.03
<hr/>			
Total Current Assets			\$567,988.28
Fixed Assets:			
Land	93,066.40		
Buildings	120,324.35		
Improvements	3,574.61		
Equipment	113,247.12		330,212.48
<hr/>			
Deferred Assets:			
Deposits on Contracts	944.00		
Repossession Reserves—Finance companies..	33,997.55		
Advances to Employees	2,429.13		
Sundry Investments—less depreciation	13,486.82		50,857.50
<hr/>			
			\$949,058.26
			<hr/>

Cochran & Celli

Balance Sheet
December 31, 1940

(All Divisions Combined)

Liabilities

Current:

Accounts Payable:

Trade Creditors	\$ 45,141.65	
Due on Repossessed Cars	1,986.00	
Accounts Receivable—credit balances	26,258.54	
Finance Charges Collected	3,244.54	
Service Contract Deposits	7,641.50	\$ 84,272.23

Notes Payable:

New Cars Financed	46,602.38	
Anglo Calif. National Bank—Unsecured..	14,000.00	
Others	8,385.33	68,987.71

Accrued Liabilities:

Interest	186.38	
Payroll	1,920.44	
Commissions	2,333.41	
Insurance	1,225.81	
Taxes	22,463.24	
Promotional Expense	555.00	28,684.28

Total Current Liabilities		\$181,944.22
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Reserves:

Bad Debts	6,783.67	
Depreciation of Buildings	55,055.39	
Depreciation of Improvements	1,009.00	
Depreciation of Equipment	68,657.67	
Used and Repossessed Car Expenses	10,255.36	141,761.09

Net Worth

Investment — January 1, 1940	523,210.34	
Net Profit for 1940	116,028.99	
	\$639,239.33	
Withdrawals for 1940	13,886.38	
Investment — December 31, 1940		625,352.95
		<u>\$949,058.26</u>

EXHIBIT No. 18

Cochran & Celli

Balance Sheet

December 31, 1941

(All Divisions Combined)

Current:	Assets	
Cash on Hand and in Bank		\$ 28,160.28
Contracts in Transit—G.M.A.C.....		5,236.98
Notes and Accounts Receivable:		
Notes Receivable	\$124,955.33	
Accounts Receivable	144,314.92	
Accounts Payable—debit balances	458.28	269,728.63
Inventories:		
New Cars and Freight and Handling	159,907.07	
Special Bodies and Cabs	12,793.22	
Used and Repossessed Cars	21,018.34	
Parts	71,627.26	
Accessories	10,561.58	
New Tires and Tubes	22,692.94	
Recapped Tires and Tire Repair		
Material	10,448.77	
Body and Trim Materials	42,396.76	
Gas, Oil and Grease	978.80	
Work in Process — Labor	3,313.21	
Other Sundry Inventories	3,589.29	359,327.24
Securities		457.00
Discount Receivable on New Car Purchases..		7,612.50
Prepaid Expenses:		
Taxes	2,722.12	
Insurance	2,956.93	
Advertising	1,176.00	6,855.05
Total Current Assets		\$677,377.68
Fixed Assets:		
Land	108,535.16	
Buildings	153,927.21	
Improvements	3,826.17	
Equipment	88,677.70	354,966.24
Deferred Assets:		
Deposits on Contracts	1,154.00	
Repossession Reserves—finance companies...	45,452.38	
Advances to Employees	1,383.52	
Miscellaneous Real Estate	2,191.55	50,181.45
		<u>\$1,082,525.37</u>

Cochran & Celli

Balance Sheet

December 31, 1941

(All Divisions Combined)

Liabilities

Current:

Accounts Payable:

Trade Creditors	\$ 64,665.46	
Accounts Receivable—credit balances	18,170.32	
Finance Charges Collected	418.15	
Service Contract Deposits	11,252.59	\$ 94,506.52

Notes Payable:

New Cars Financed	63,026.29	
Others	19,698.04	82,724.33

Accrued Liabilities:

Interest	322.75	
Payroll	5,466.70	
Commissions	1,175.45	
Insurance	1,630.16	
Taxes	17,453.28	
Promotional Expense	310.00	26,358.34

Total Current Liabilities		\$ 203,589.19
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Reserves:

Bad Debts	6,134.42	
Depreciation of Buildings	59,670.82	
Depreciation of Improvements	1,484.18	
Depreciation of Equipment	35,111.64	
Used and Repossessed Car Expense	4,203.67	106,604.73

Net Worth

Investment — January 1, 1941	625,352.95
Net Profit for 1941	177,715.64

\$803,068.59

Withdrawals for 1941	30,737.14
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Investment — December 31, 1941	772,331.45
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 \$1,082,525.37

EXHIBIT No. 19

Cochran & Celli

Balance Sheet

December 31, 1942

(All Divisions Combined)

Current:		Assets	
Cash on Hand and in Bank		\$ 172,517.48	
Contracts in Transit		723.85	
Notes and Accounts Receivable:			
Notes Receivable	\$ 64,420.90		
Accounts Receivable	104,249.62		
Accounts Payable—debit balances	232.48	168,903.00	
Inventories:			
New Cars and Freight and Handling	163,169.27		
Special Bodies and Cabs	17,716.37		
Used and Repossessed Cars	15,484.73		
Parts	89,685.77		
Accessories	7,584.70		
New Tires and Tubes	11,662.31		
Recapped Tires and Tire Repair			
Material	1,346.52		
Body and Trim Materials	44,934.36		
Gas, Oil and Grease	746.05		
Work in Process — Labor	2,524.93		
Other Sundry Inventories	3,732.51	358,587.52	
Securities		457.00	
Prepaid Expenses:			
Taxes	2,879.19		
Insurance	3,351.67		
Advertising	1,122.00	7,352.86	
Total Current Assets		\$708,541.71	
Fixed Assets:			
Land	108,535.16		
Building	156,767.51		
Improvements	3,826.17		
Equipment	90,646.83	359,775.67	
Deferred Assets:			
Deposits on Contracts	1,184.00		
Repossession Reserves	26,526.84		
Advances to Employees	1,016.23		
Miscellaneous Real Estate	2,191.55	30,918.62	
		\$1,099,236.00	

Cochran & Celli
Balance Sheet
December 31, 1942
(All Divisions Combined)

Liabilities

Current:

Accounts Payable:

Trade Creditors	\$ 37,616.49	
Accounts Receivable—credit balances	16,876.76	
Service Contract Deposits	8,263.47	\$ 62,756.72

Notes Payable:

New Cars Financed	61,990.04	
Others	5,226.16	67,216.20

Accrued Liabilities:

Interest	2,126.11	
Payroll	13.75	
Insurance	1,195.30	
Taxes	8,185.22	11,520.38

Total Current Liabilities		\$ 141,493.30
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Reserves:

Bad Debts	4,016.89	
Depreciation of Buildings	65,486.66	
Depreciation of Improvements	2,355.74	
Depreciation of Equipment	44,043.70	
Used and Repossessed Car Expense	3,096.95	118,999.94

Net Worth

Investment — January 1, 1942	772,331.45	
Net Profit for 1942	142,075.81	
	\$914,407.26	
Withdrawals for 1942	75,664.50	
Investment — December 31, 1942		838,742.76
		<u>\$1,099,236.00</u>

EXHIBIT No. 20

Cochran & Celli

Balance Sheet

December 31, 1943

(All Divisions Combined)

Assets

Current:

Cash on Hand and in Bank	\$ 195,002.18
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Notes and Accounts Receivable:

Notes Receivable	\$ 25,069.59	
Accounts Receivable	74,385.95	
Accounts Payable—debit balances	122.49	99,578.03

Inventories:

New Cars and Freight Handling	59,923.28	
Special Bodies and Cabs	7,731.89	
Used Cars	37,509.51	
Parts	75,405.99	
Accessories	7,500.93	
New Tires and Tubes	14,325.34	
Body Materials	35,326.20	
Recapping Material	2,034.89	
Duco Materials	5,892.19	
Gas, Oil and Grease	686.95	
Work in Process	3,488.93	
Other Sundry Inventories	1,120.99	250,947.09

Securities	457.00
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Prepaid Expenses:

Taxes	2,882.67	
Insurance	6,134.01	
Advertising	384.00	9,400.68

Total Current Assets	555,384.98
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Fixed Assets:

Land	232,146.95	
Buildings	239,175.37	
Improvements	3,826.17	
Equipment	105,838.22	580,986.71

Deferred Assets:

Deposits on Contracts	729.00	
Repossession Reserves	1,225.87	
Advances to Employees	923.87	
Miscellaneous Real Estate	2,191.55	5,070.29

	\$1,141,441.98
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Cochran & Celli
Balance Sheet
December 31, 1943
(All Divisions Combined)

Liabilities

Current:

Accounts Payable:

Trade Creditors	\$ 42,527.96	
Accounts Receivable—credit balances	20,328.53	
Service Contract Deposits	7,739.59	\$ 70,596.08

Accrued Liabilities:

Insurance	1,941.58	
Taxes	8,646.61	10,588.19
Total Current Liabilities		\$81,184.27

Reserves:

Bad Debts	3,112.40	
Depreciation of Buildings	71,581.63	
Depreciation of Improvements	2,672.93	
Depreciation of Equipment	55,539.25	
Used Car Expenses	7,501.90	140,408.11

Net Worth

Investment — January 1, 1943	838,742.76	
Net Profit for 1943	177,865.68	
	\$1,016,608.44	
Withdrawals for 1943	96,758.84	
Investment — December 31, 1943		919,849.60
		<u>\$1,141,441.98</u>

EXHIBIT No. 21

Cochran & Celli

Balance Sheet

December 31, 1944

(All Divisions Combined)

Current:		Assets	
Cash on Hand and in Bank			\$ 205,880.69
Notes and Accounts Receivable:			
Notes Receivable	\$ 30,844.73		
Accounts Receivable	100,742.51		
Accounts Payable—debit balances	73.30		
Interest Receivable	200.48		131,861.02
<hr/>			
Inventories:			
New Cars and Freight and Handling	7,360.90		
Special Bodies and Cabs	694.14		
Used Cars	64,959.33		
Parts	99,243.82		
Accessories	4,320.45		
New Tires and Tubes	8,299.63		
Body Materials	76,034.32		
Recapping Material	3,964.67		
Duco Materials	5,566.14		
Gas, Oil and Grease	1,106.26		
Work in Process	6,649.90		
Other Sundry Inventories	637.08		278,836.64
<hr/>			
Securities			55,457.00
Prepaid Expenses:			
Taxes	5,992.26		
Insurance	4,756.14		
Advertising	36.00		10,784.40
<hr/>			
Total Current Assets			\$682,819.75
<hr/>			
Fixed Assets:			
Land	232,146.95		
Buildings	239,175.37		
Improvements	3,826.17		
Equipment	102,450.89		577,599.38
<hr/>			
Deferred Assets:			
Deposits	346.62		
Repossession Reserves	386.04		
Advances to Employees	1,437.56		
Miscellaneous Real Estate	2,191.55		4,361.77
<hr/>			
			\$1,264,780.90
			<hr/>

Cochran & Celli

Balance Sheet

December 31, 1944

(All Divisions Combined)

Liabilities

Current:

Accounts Payable:

Trade Creditors	\$ 62,763.51	
Accounts Receivable—credit balances.....	15,344.53	
Service Contract Deposits	7,355.17	\$85,463.21

Accrued Liabilities:

Payroll	1,398.16	
Insurance	2,435.38	
Taxes	9,390.28	13,223.82

Total Current Liabilities		\$98,687.03
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Reserves:

Bad Debts	2,730.98	
Depreciation of Buildings	80,423.52	
Depreciation of Improvements	2,939.69	
Depreciation of Equipment	63,566.12	
Used Car Expenses	13,614.61	163,274.92

Net Worth

Investment — January 1, 1944	919,849.60	
Net Profit for 1944	176,501.76	
		\$1,096,351.36
Withdrawals for 1944	93,532.41	
Investment — December 31, 1944		1,002,818.95
		<u>\$1,264,780.90</u>

EXHIBIT No. 22

Schedule of Annual Net Profits of Cochran & Celli
for the Years 1932 to 1944, Inclusive

1932	..... (Loss) \$	19,587.90
1933	.....	25,343.66
1934	.....	15,216.96
1935	.....	46,462.47
1936	.....	65,699.40
1937	.....	72,680.54
1938	.....	49,406.81
1939	.....	65,742.01
1940	.....	135,892.66
1941	.....	202,841.39
1942	.....	160,720.11
1943	.....	198,238.69
1944	.....	187,354.46

Filed at hearing May 11, 1950.

The Tax Court of the United States

Docket No. 26266

ESTATE OF MABEL COCHRAN, Deceased,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 26267

JOSEPH E. COCHRAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Courtroom 421, Appraisers Building,

San Francisco, California, Thursday, May 11, 1950.

PROCEEDINGS

(Met, pursuant to notice, at 10:00 o'clock a. m.)

Before: Hon. Samuel B. Hill, Judge.

Appearances:

ELI FREED, ESQ., and

EMMETT GEBAUER, ESQ.,

1069 Mills Building,

San Francisco 4, California,

Appearing on Behalf of Petitioner.

CHARLES W. NYQUIST, ESQ.,

(Hon. Charles Oliphant, Chief Counsel,
Bureau of Internal Revenue)

Appearing for the Respondent.

The Court: Call the case for trial.

The Clerk: Docket 26266, Estate of Mabel Cochran, 26267, Joseph E. Cochran.

The Court: Announce your appearances, please.

Mr. Freed: Eli Freed—I am Eli Freed. This is Emmett Gebauer, Counsel for the Petitioner.

Mr. Nyquist: Charles W. Nyquist for Respondent.

The Court: State your case for the Petitioner. These cases are being consolidated for hearing, I take it.

Mr. Freed: Yes, your Honor.

The Court: They may be consolidated for hearing.

Mr. Freed: This case, your Honor, as you know, involves the years 1942, 1943 and 1944 and concerns a business in Oakland, Alameda County, California. It is what might be classed as a family partnership income tax case. This business is an old business, a Chevrolet dealership, automobile dealership, with a number of departments. I think it is the oldest Chevrolet dealership in California. The business was originally organized, I think, back in 1906 by Mr. Joseph E. Cochran and Bernardo Celli, Sr. They were partners and they did business under the name of Cochran and Celli. Mr. Cochran was

married to Mabel Cochran, who had died in 1946. Bernardo Celli was married to Anna Celli, and they have both died. Bernardo Celli, Sr., died in August of 1945 and Anna Celli died [3*] in the spring of 1947. The property of the partnership as between the husband and wife was community property under the laws of California. On the Cochran side there were four children—there are four children—and I might add that the families are unrelated to each other by blood or marriage. Now, on the Cochran side there are four children, Sidney E. Cochran, Donald Robert Cochran, the two boys, and Bernice Cochran Johnson, now married—her married name is Johnson—and Winifred Cochran Irwin married James Irwin. All of these children are adults, now adults.

Now, on the Celli side there were two children. There is Bernardo Celli, Jr., called Ben Celli, and reference will no doubt also be made to the senior Bernardo Celli who is also known as Ben Celli, Sr. There is another son, Lloyd Celli. They are adults.

In 1937, the senior members of the families initiated steps which led to the formation of a partnership by all of the members of both families, taking effect January 1, 1938, and the partnership which is before the court is that partnership, which was organized on January 1, 1938. At that time all of the children were adults with the exception of Donald Robert Cochran, who was then seventeen years of age, and he was not admitted to partner-

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

ship at that time. A written partnership agreement, very comprehensive agreement, was drafted by the lawyer representing all of the parties, a Mr. Leo Wilson, [4] and that partnership agreement, which will be offered in evidence—it has been stipulated to, by the way—recognizes that Donald Robert Cochran was not yet twenty-one years of age and contemplates that he would, if he desired, be admitted as a partner when he became twenty-one years of age.

This partnership of Cochran and Celli, in 1937, had a substantial amount of capital in the business and our case will, of course, be to that extent—the capital was of extreme importance in this business and that it was a very important factor in the production—for doing business and the production of income. The boys, with the exception of Donald, in 1937 were working in the business and were exercising important functions in the business. At this juncture I should perhaps observe that the boys—they are no longer boys, they are men, if your Honor please—but the sons, as far as the sons are concerned, their status is not being questioned by the respondent, nor, for that matter—to what extent the status of the girls is being questioned is not exactly clear, but what is being questioned, and I put it this way advisedly, is the taxability of the income attributed to the daughters in this partnership for the years before the court. That is, the taxability of their distributive shares in the partnership to them, and it is contended by respondent that the income attributed to the daugh-

ters, that is the income from the partnership to which they are entitled to for those years, should be [5] taxed to J. Cochran and Mabel Cochran, their father and mother.

The Court: On the basis of community interest or a partnership between the husband and wife?

Mr. Freed: That isn't clear from the deficiency letter. The deficiency letter merely states that one-half of the income of the daughters will therefore be taxed to J. Cochran, and the letter sent to him and the letter to Mabel—not to Mabel Cochran but the estate of Mabel Cochran, deceased—they are similarly addressed and state the same thing.

The parents and the children decided, as I said, to form the partnership, and then a lawyer was engaged and the lawyer advised them to establish investment accounts or transfer capital to the children from the parents through gifts, and that it would be to the advantage of the parents to make their initial transfer of gifts to the children in a manner that would result in no gift tax, in the year in which the partnership was organized and thereafter, to build up the interests of the children by gifts of amounts which would be excluded, that is, exclusionary amounts from the gift tax thereafter for some years until the plan which they had would be permanently established. However, this is not a gift tax case, it is an income tax case, and there was no income tax motive whatsoever which induced the parents or the children to form the partnership. The reason for the partnership, the [6] purpose for it, is a purpose which is entirely consistent with

the situation then existing and consistent with the philosophy of the families. The boys were then working in the business. In fact, Ben Celli, Jr., had a very important position in the business; Sidney Cochran had a very important position in the business at that time; Lloyd Celli was doing important work at that time as well.

The Court: Do we have in this case a question of whether or not the Celli children were partners?

Mr. Freed: They are recognized as partners, your Honor.

The Court: We do not have to decide that in this case?

Mr. Freed: No, we don't, but the entire picture, as we see it, will have to be presented to the court in order to ascertain the intent of the parties. We do not have here the conventional case, as I see it, of husband and wife or of one family or of children being brought into a business of a certain kind and where you have more or less the usual pattern or form. We have a different case; we have a case of an old, established partnership here, and there are many members of the partnership on both sides, and at a time when income was not very high and income tax rates were comparatively low. In fact, some years before there were any increases in income tax rates, and no question was ever made by the respondent of the bona fide status of this partnership officially until a 30-day letter was sent, that is, a 30-day protest letter, with [7] findings of the Office of Internal Revenue Agent in Charge, San Francisco office, in October of 1948, and the

first years ever questioned were these years, 1942, 1943, and 1944, and the 30-day letter refers to the Tower and Lusthaus cases.

Now, it will be the position of the petitioners that bona fide, completed, honest, true gifts were made to the daughters and that the conduct of the parties, pursuant to the partnership agreement and with respect to each other and in the business was entirely consistent and supports the position of the petitioner that the gifts were in every sense complete, recognized, and that these were gifts of investments; the investments were true investments, the investments were productive of income, and that the income earned by those investments belonging to the daughters should be taxed to the daughters.

I should mention that those partners who worked in the business, that is, the two fathers, J. Cochran and Bernardo Celli, Sr., and Sidney Cochran and Donald Cochran and Bernardo Celli, Jr., and Lloyd Celli, all earned salaries. The salaries were paid to them for their services consistently and at all times in recognition of their services. That is, that factor or element in the partnership was treated in a very realistic manner right from the very beginning, and that factor, in so far as it was income producing, was recognized by—as earning income to those persons as compensation for the services which [8] they rendered.

There is another element in this partnership which is of significance, which I think should also be given, or should be observed at this time. The

business, as I suggested before, consisted of a number of departments. There was the new car department and the used car department, and a body-building department. That has always been an important department in the business—tire department, finance department, and the partnership owned a considerable amount of real property used in the business. They owned their own improved real property, which is a very substantial part of the assets of this business.

When the partnership was formed in 1937 it was recognized, in view of the fact there were a considerable number of partners in this enterprise, that it would be efficient and desirable to vest the real property in trust with the two oldest sons. That is, in trust for all of the partners, and the real property was vested in them that way and the partnership agreement so provides, and the two oldest sons signed a declaration of trust to that effect. The partnership agreement also recognized the difference in number of members of the families on each side. On the Cochran side when the partnership was organized, your Honor, there were five members in the partnership, and on the Celli side there were four members of the partnership, and the history of this business has always [9] been that the control or voice in the business be equally divided between the two families and that profits and losses, of course, also be divided equally.

Upon the formation of this partnership it was recognized that in order to maintain that equality of voice in the business and for good—other good

business reasons, which will be brought out, we trust, the two parents were designated as managers, and the agreement by its terms vests in those two parents as managers an equality of control which could, if necessary, be exercised to the extreme. However, that maintained the equality of voice in the two families. Now, after the partnership was organized and for several years thereafter, consistent with the policy of the business for many years, the partners continued to build up their investment accounts for purposes of expansion, which will be brought out, I feel certain, and there were very few—there will be a schedule of the drawings of the partners presented here—and the business was built up over the years and their investment accounts grew. Those partners who worked drew salaries; those who didn't work didn't get any salaries, and finally—that is, before notice was ever received from the government—objectively and for good and valid business reasons this business was reorganized on July 1, 1948. I might mention an amendment amending the partnership agreement was made in February, 1945, which will also be offered in evidence. Only July 1, 1948, the Cochran and [10] Celli automobile dealership was reorganized and a corporation was formed and all of the property of the business with the exception of the real property—pertaining to the operation of that automobile dealership and its departments, were all transferred to the corporation, subject to the obligations of the business, and stock was issued, capital stock. The corporation was and is a Cali-

fornia corporation. Stock was issued to each and every one of the partners in consideration for the share of net worth attributable to each partner, which was transferred to the corporation, and stock was given to Mrs. Johnson—that is, Bernice Cochran—and to Winifred Cochran—that is, Winifred Irwin. That is, stock was given to them without any question at the time. There was no thought of any question, and the business has been operating as a corporation since July, 1948. However, with the real property, which was very substantial, it was kept in the partnership and the finance department was also kept in the partnership, and the name of the partnership was changed to Cochran and Celli Investment Company and the partners, Cochran and Celli, have been the partners of Cochran and Celli Investment Company—which of course occurred in 1948 but is of considerable importance as evidence of gifts that were made. They were always regarded as good, valid, completed gifts, and the parties carried through all the way down the line.

I think I should just mention, although it will come out, [11] it was in 1941 Donald Robert Cochran became an adult and at that time he was admitted to the partnership, and he has worked in the business ever since as an important executive in the business, has been for some time and is today.

The Court: Does that complete your statement?

Mr. Freed: Yes. If counsel wishes, I can offer stipulations——

The Court: Let Mr. Nyquist make his statement.

Mr. Freed: All right.

Mr. Nyquist: The partnership with which we are concerned here was formed in 1937 when the two senior members of the two families decided to bring in the members of their respective families, bring under the terms of the agreement—bring eight new members into the partnership. Respondent has recognized the sons who came in as partners. They were in the business, rendering valuable services. The wives need not be considered, for the reason the partnership interests originally were community property and whether or not the wives be recognized as partners, one-half of what would otherwise be the husband's income would be taxable to the wives under community property principles; so we are concerned only with the status of the two daughters, both in the Cochran family, and the years before the court are the years 1943 and 1944, and that carries with it the forgiveness year of 1942. Respondent will take the position that some of the things which Mr. Freed mentioned with respect to forming a corporation some ten years after the formation of [12] the original partnership, and when circumstances were greatly changed after the death of Mr. Celli and his wife and after the death of Mr. Cochran's wife—that circumstances were changed to such a great extent and that it was so far removed in time that such matters are entirely immaterial in this case. The parties have stipulated facts to the greatest extent possible. That is, we have stipulated practically all of the documentary material, I believe, and we have

stipulated book entries for the purpose of saving time in court in digging the material out of the books. We have not attempted to stipulate anything that might go into matters of opinion or intention of the parties.

I don't think I can say anything that will be of further help to the court at this time.

The Court: You may offer your stipulation of facts.

Mr. Freed: I now offer the stipulation arrived at by the parties.

The Court: The stipulation will be received.

Mr. Freed: And we ask permission—there is a copy here and there is an additional copy without exhibits which we will give to the clerk at noon, if your Honor please.

We also would like to offer at this time the partnership returns as exhibits next in order for the years 1942, 1943 and 1944.

The Court: Offer them one at a time. [13]

Mr. Freed: Yes. I offer first the partnership return of income for the calendar year 1942.

The Court: What is the exhibit number?

Mr. Nyquist: That will be 23, your Honor.

The Court: Admitted as Petitioner's Exhibit 23.

(Whereupon the document was marked for identification as Petitioner's Exhibit 23 and was received.)

Mr. Freed: I next offer as Petitioner's Exhibit No. 24 the partnership return of income of Cochran and Celli for the calendar year 1943.

The Court: Admitted.

(Whereupon the document was marked for identification as Petitioner's Exhibit 24 and was received.)

Mr. Freed: I next offer as Petitioner's Exhibit No. 25 the partnership return of income of Cochran and Celli for the calendar year 1944.

The Court: Admitted.

(Whereupon the document was marked for identification as Petitioner's Exhibit 25 and was received.)

Mr. Freed: I now wish to offer as Petitioner's Exhibit No. 26 a photostatic certified copy of a certificate of doing business under a fictitious name, filed in the office of the Clerk of Alameda County, June 29, 1938, pursuant to the provisions, I believe, of Sections 2466 and 2468 of the Civil Code of the State of California. [14]

Mr. Nyquist: No objection.

The Court: Admitted.

(Whereupon the document was marked for identification as Petitioner's Exhibit 26 and was received.)

PETITIONER'S EXHIBIT No. 26

Certificate of Doing Business Under a Fictitious Name

We, the undersigned, do hereby certify that we are transacting business as a copartnership in the State of California, and have our principal place

of business in the City of Oakland, County of Alameda, State of California, under the firm name and style of Cochran & Celli, and that we are the sole owners of said business.

That on the 7th day of August, 1923, a certificate of doing business under the said name of Cochran & Celli was filed and published in the County of Alameda in the manner required by law, and that since said time there has been a change in the personnel of the partnership transacting business under the said name, and that the undersigned are now the only persons having any interest in said business;

That our respective names and places of residence are as follows, to wit:

Joseph E. Cochran, 8 Aztec Way, Oakland, California.

Mabel Cochran, 8 Aztec Way, Oakland, California.

Winifred Cochran, 8 Aztec Way, Oakland, California.

Sidney Elmer Cochran, 2927 76th Avenue, Oakland, California.

Bernice Cochran Johnson, formerly Bernice M. Cochran, Coalinga, California.

Bernardo Celli, Sr., 1801 Melvin Road, Oakland, California.

Anna Celli, 1801 Melvin Road, Oakland, California.

Bernardo Celli, Jr., 2208 Carroll Street, Oakland, California.

Lloyd Celli, 1801 Melvin Road, Oakland, California.

That we are transacting a business in the buying, selling, manufacturing and repairing of new and used automobiles, parts, automotive vehicles and equipment.

Witness our hands this 20th day of May, 1938.

/s/ JOSEPH E. COCHRAN,

/s/ MABEL COCHRAN,

/s/ WINIFRED COCHRAN,

/s/ SIDNEY ELMER COCHRAN,

/s/ BERNICE COCHRAN

JOHNSON,

Formerely Bernice M.

Cochran;

/s/ BERNARDO CELLI, SR.,

/s/ ANNA CELLI,

/s/ BERNARDO CELLI, JR.,

/s/ LLOYD CELLI.

The foregoing instrument is a correct copy of the original on file in this office.

Attest: May 5, 1950.

G. E. WADE,

County Clerk and Ex-Officio Clerk of the Superior Court of the State of California in and for the County of Alameda.

By /s/ G. DeMARIA,

Deputy.

State of California,
County of Alameda—ss.

On this 20th day of May, in the year One Thousand Nine Hundred and Thirty-Eight, before me, Wm. S. Wells, Jr., a Notary Public in and for the County of Alameda, State of California, residing therein, duly commissioned and sworn, personally appeared Joseph E. Cochran, Mabel Cochran, Winifred Cochran, Sidney Elmer Cochran, Bernice Cochran Johnson, formerly Bernice M. Cochran; Bernardo Celli, Sr., Anna Celli, Bernardo Celli, Jr., and Lloyd Celli, known to me to be the persons described in and whose names are subscribed to the within instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, the day and year in this certificate first above written.

[Seal] /s/ WM. S. WELLS,
Notary Public in and for said County of Alameda,
State of California.

[Endorsed]: Filed June 29, 1938.

Admitted in evidence May 11, 1950.

Mr. Freed: I now wish to offer in evidence for the sole purpose of establishing the element of time the letters dated October 5, 1948, sent by the office of the Internal Revenue Agent in Charge of the Treasury Department in San Francisco to J. E.

Cochran, Mabel Cochran, Bernice C. Johnson and Winifred Irwin, purely for the purpose of establishing the time of the notice of the proposed deficiency.

Mr. Nyquist: Objection, your Honor. These Revenue Agent's reports and letters are immaterial and add nothing to—contribute nothing toward determination of the sole question in issue in this case, whether these two daughters are members of the partnership.

The Court: I do not see the materiality of that.

Mr. Freed: The materiality is merely the element of time, that anything the parties did prior to the notice, or, that is, within a reasonable time prior to the notice, would, of course, have some weight from the standpoint of objectivity.

The Court: The notice of deficiency bears the date of issuance, does it not?

Mr. Freed: Yes.

The Court: That is the date that is important here, I [15] think.

Mr. Freed: That is all that I wish to establish.

The Court: I will sustain the objection.

Mr. Freed: All right.

The Court: I take it that the notice of deficiency is attached to your petition?

Mr. Freed: The notice of deficiency—that is correct. This notice that I have reference to, that I have offered for the dates, was merely the first notice received from the Treasury Department.

The Court: The date of the notice of deficiency is the determinative date.

Mr. Freed: Very well, your Honor.

I will call my first witness now.

The Court: Call your witness.

Mr. Freed: Mr. Joseph E. Cochran, please.

Whereupon,

JOSEPH E. COCHRAN

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: J. E. Cochran.

The Court: What is your address?

The Witness: 108 Van Ripper Lane, Orinda, California. [16] ..

Direct Examination

By Mr. Freed:

Q. Mr. Cochran, in the year 1937 you were married to Mabel Cochran, is that correct?

A. Yes, sir.

Q. When were you married to her; when did you marry her? A. In 1908.

Q. Now, you were a partner—that is, prior to 1938—in the firm of Cochran and Celli, that is correct, is it not? A. Yes, sir.

Q. And your partner was Bernardo Celli, Sr.?

A. Yes, sir.

Q. How did that business originate?

A. It started as a blacksmith shop, known as the City Front Wagon Works.

Q. The City Front Wagon Works?

(Testimony of Joseph E. Cochran.)

A. Yes.

Q. And when was that business organized?

A. Well, that business was really organized in 1906.

Q. And who organized that business?

A. I started the business and my partner came in as a workman at that time.

Q. Who was your partner?

A. Later, but not in 1906.

Q. And you refer to Bernardo Celli, Sr.?

A. Yes. [17]

Q. Do you remember when you both became partners for the first time?

A. Well, we had a working partnership from the start, but we didn't take out any partnership papers for a number of years. I think 1911. I can't be quite sure but I believe that is right, and I think we took them out under the Cochran and Celli rather than under the City Front Wagon Works.

Q. You and Bernardo Celli, Sr., commenced a business under the name of Cochran and Celli, under a franchise or selling agreement from the Chevrolet Motor Company many years ago?

A. That's right.

Q. Do you remember when it was that you and Mr. Celli, Sr., first went into business together, formed a partnership together, in the operation of the Chevrolet automobile dealership?

A. Well, I can't say we were in partnership, we took what is known as a subdealership in 1915. We got our first franchise from Chevrolet Motor Com-

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(Testimony of Joseph E. Cochran.)

pany in 1917, in the spring. That is the first contract we had with the company that was under the name of Cochran and Celli.

Q. Yes, and prior to that time, that is 1912 to 1915, what was the nature of the business of Cochran and Celli?

A. Building wagons and heavy duty trucks, and making repairs.

Q. And after you were married you had four children, is [18] that right? A. Yes.

Q. There were Sidney Elmer Cochran, a son—suppose you state their names in the order of their ages. A. Bernice was our first child.

Q. Yes?

A. And Winifred the second. Sidney the third and Donald several years later. The early children were closer together, the girls being the oldest and the boys being the youngest.

Q. Bernardo Celli, Sr., had two children?

A. Yes.

Q. And in the order of their ages, would you please state their names?

A. Bernardo Celli, Jr., and Lloyd Celli were the two children.

Q. Now, prior to 1938 will you please state for the record what the activities, if any, of those children, all of them, were in the business of Cochran and Celli in a general way?

A. Well, at that time three of the boys were in the business, and——

Q. In 1937, are you referring to?

(Testimony of Joseph E. Cochran.)

A. Yes, 1937.

Q. And prior to that time?

A. Well after they had finished college or [19] schools, outside of vacations they were with us immediately after they got out of college in all cases. The girls—during and previous to that era they helped in the summer time, in vacations, but substituting, but on graduation from college they both became teachers and took jobs at that profession, so they were not with us.

Q. Now, were the Celli boys, that is, Bernardo Celli, Jr., and Lloyd Celli, also active in the business?

A. Yes, they were.

Q. When did they come into the business?

A. I can't remember the exact years.

Q. Were they in the business in 1937?

A. Ben, for several years Ben was very active—Ben was very active at that time. In fact, he was total head of the sales. He was sales manager, I believe, in 1938.

Q. What was Sidney in 1937?

..

A. In 1937 he came up as assistant sales manager. Before that he had been on the garage end of it, the repairs, and getting the new cars ready and stuff like that.

Q. What was the nature of the operations of the business, could you describe them for the record; that is, for the partners of the business?

A. Well, when we went in the automobile business we did not give up our blacksmith business. We built a new plant and continued, which was what

(Testimony of Joseph E. Cochran.)

we called our commercial sales division, [20] making bodies and trucks, and very early in our history I took on tires, so we had a tire department; and there came a time when Chevrolet demanded that I segregate the different businesses, so at that time I had a tire department, which was at one location, a body plant, which was at another location, and then the automobile agency, which occupied three different locations, one being sales, one service and parts, and one being storage and handling of trucks and getting new cars ready.

Q. And that is a description of your business in a very general way in the year 1937?

A. That is the way it stood in 1937.

Q. In 1937, Mr. Cochran, the partnership owned real property, did it not? A. Yes, it did.

Q. Do you have a present recollection as to the kind of real estate the partnership owned and used in the business in that year?

A. In that year?

Q. Yes, up to 1938.

A. I don't know the exact footage, but I can give you the locations and approximate footage.

Q. No, we don't want that.

A. You just want the buildings we owned?

Q. Yes.

A. A service department at 5th and Broadway which ran [21] through to 6th; quite an extensive plant we leased at the corner of 12th and Harrison, 10,000 feet, for sales purposes. We had our body shop at 8th Avenue and we had our new car storage

(Testimony of Joseph E. Cochran.)

and reconditioning and used car repair operations at 9th Avenue; and I believe we had the tire, yes, we bought the tire property at that time. I think we had used cars and a tire operation, quite a large lot, at 23rd Avenue and East 12th Street. I believe that was our holdings, outside of some nominal properties we may have taken in trade, like a house or so. That was our main holdings at that time.

Q. Now, Mr. Cochran, I call your attention to Petitioner's Exhibit 7, which represents the written articles of copartnership, made on the first day of January, 1938, between you and all of the members of your families with the exception of Donald, and all of the members of the Celli family, and I wish to question you about certain events leading up to the making of that agreement. Now that agreement—I withdraw that.

What was the reason and purpose for that agreement, Mr. Cochran?

A. Well, we, myself particularly and my partner, both felt that if possible we should try to interest our sons so that we could keep them in the business with us. In the first place, our franchise, in the case of either one of our deaths, hinged very much on if we had some of our own people trained so [22] they could go in. Salaries were not large at that time. The boys were paid as much as we could hire them in for, but it was not large. Him and I discussed in 1936—realized we went through from 1929 to '33, going on '34, a dead loss every year. We gradually cut back a little until in De-

(Testimony of Joseph E. Cochran.)

cember, 1936, we were just where we was in 1939.

The Court: In 1929, you mean?

The Witness: Our net worth in 1929 and our net worth in 1936, your Honor, were just the same. We had not—we started to make a little money in 1934, 1935 and 1936, enough to bring back our losses. We felt that if we were to keep our boys interested that they should be in the business and participating in the money we now were starting to make, in order that they could marry and get homes and have some money. Now, in Ben's case, he had the two boys and it meant he was taken care of. In my case, I had four children and I wanted my boys, if anything, to go the same as his. I had two girls. I couldn't do any different with my girls than I did with my boys. I had to do the same, so when we talked about money to do this thing—his boys' would be double what each one of my children would get, and that had something to do with the amount of investment to start. After we had talked this over for the latter part of '36 and '37, he had a good friend who was an attorney and we went to him for advice. And then, after some three or four months, the families talking [23] amongst themselves and we talking and having to go together with an attorney, we didn't know what was the best way to do it, but he said we could do it with the least expense if we would start with gifts within the law and then gradually go down the years. Mother's and my idea was to get our share of business, the business in six equal parts—

(Testimony of Joseph E. Cochran.)

that is what we was working for. We had the idea if we prospered we would like to have our children have some of that and use it as they grew up and raised families rather than wait until the end. It seems to me in that paragraph 5—

Q. Just a moment. Mr. Cochran, do you wish to refer to paragraph 5?

A. That is about control—

Q. Just wait a minute.

Mr. Freed: In order for Your Honor to follow this testimony, I think that it would probably—don't you agree, Mr. Nyquist—probably worth while calling His Honor's attention to the provisions of paragraph 5.

Mr. Nyquist: If you wish to read paragraph 5, I have no objection.

Mr. Freed: I think we should, because, as I understand it, respondent makes a very important point of that paragraph.

Paragraph 5 reads: "It is hereby agreed that J. E. Cochran and Bernardo Celli, Sr., shall have, and are hereby given, the exclusive management and control of the conduct of [24] said business and of any and all matters pertaining thereto, and the sole and exclusive power and authority to employ and discharge the employees of said co-partnership, and any and all thereof, including each and all of his co-partners herein as such employees; and to fix any and all salaries, including those of themselves and other co-partners; and the sole and exclusive power and authority to sign any and all checks, promis-

(Testimony of Joseph E. Cochran.)

sory notes or other evidence of indebtedness of said co-partnership; and the sole and exclusive power and authority to collect and distribute the assets and profits of said co-partnership among and between the said copartners, or any of them, and to make payment thereof, or of any part or portion thereof, to said respective co-partners; and the sole and exclusive authority to determine the necessity for, and to levy and collect assessments from the respective co-partners to provide for payment of losses or expenses; and the sole and exclusive power and authority to incur indebtedness for and in behalf of said co-partnership, and to make any and all contracts and agreements for and on behalf of said co-partnership, and to settle, adjust and compromise any and all disputes, claims and demands of whatsoever kind or nature in connection with said co-partnership or said co-partnership business; and generally, to do and perform any and all things necessary to be done or performed for the successful conduct, management, and control of said co-partnership business, including the right to [25] delegate to others the power to exercise all or any of the said functions; and in so managing and controlling said business, and in the performance of said duties, as aforesaid, the said J. E. Cochran and Bernardo Celli, Sr., and their successors as hereinafter provided for, will give their attendance, and to the utmost of their ability exert themselves for the joint interest, benefit and advantage of the parties hereto;

(Testimony of Joseph E. Cochran.)

said controlling parties or their said successors shall hereinafter be designated as 'Managers.' "

The agreement also provides, Your Honor, that in case of death of either of the managers there shall be succession to the office of manager—in the case of either partner dying, why, his eldest son will succeed him as the manager.

Q. (By Mr. Freed): Now, Mr. Cochran, you indicated you wished to make some statement with respect to paragraph 5. Would you please state to the court, if you can——

A. I would just like——

Q. ——the purpose and intent of that provision?

A. I just would like to make one statement because, Lord knows, Ben and I talked about it. We had went all these years without ever a dispute between us. Knowing that as the children grew and stress came on the business there might be questions come up that had to be decided between the two families—all we intended to ask in our contract, however our [26] attorneys handled it, was that the final decision should be settled between him and myself because we knew we could agree, and that is why the provision is in there, in the contract. The contract takes care of it. If it couldn't be adjusted, the partner dissatisfied has a way out. His partner can buy him out. We didn't think it would happen and it never did happen.

Q. Was there any intention in connection with paragraph 5 that either you or Ben Celli should

(Testimony of Joseph E. Cochran.)

have any personal advantage whatsoever from that provision?

A. No. On the contrary, when this contract was executed Ben, Sr. was signing checks, was hiring all sales forces.

Q. Ben, Sr.?

A. Ben, Jr. Ben, Jr. had been signing checks for several years. I don't believe Sid had, because he didn't happen to be in that end of the department, see. He was in charge of all sales, hiring and discharging, and for several years even up to that time the boys sat in on management, when we hired or discharged.

Q. At the time the partnership agreement was signed, was there any factor involved with respect to the maintaining of the equality of voice or vote between the two families; was that given any consideration in connection with this paragraph 5?

A. I didn't quite get that clear.

Q. I will rephrase that. In connection with paragraph 5 [27] of the partnership agreement, was any consideration given to the fact that the number of the partners in the Cochran family would be greater than that in the Celli family and that there would perhaps be a problem with respect to equality of voice in the business?

A. We knew in time it would be six to four and there couldn't be a vote, because we would have had six to their four and our thinking—if you get me right—we realized we had been doing business quite a while, all the boys going to school, but we didn't

(Testimony of Joseph E. Cochran.)

as we built up the business want something that might wreck it, and inasmuch as Ben and I had always been able to agree down through the years, twenty-five years and more, we felt in case of dispute my family would leave it to me and his family would leave it to him, and we could still go ahead, keep going, and not have the business disturbed or broken up, and that was solely our talk as we talked in those days.

Q. Was there any income tax consideration of any kind present in connection with the organization of this partnership?

A. There never was. The income tax—we realized we had lost money for several years and when we did start to make it we made very little. In that year, I don't know what it was but it was a nominal consideration. I never knew what it was even to think about it as far as I was concerned at that time.

Q. Did any of the other partners, to your knowledge, have [28] any concern with respect to income taxes?

A. The only tax that was talked about was gift tax, but income—from ourselves, we was only interested in how we could give it to the children with the least expense. That was the whole meaning at the time we entered into the partnership.

Q. You made some reference to the Chevrolet franchise and by bringing the children into the partnership it would——

A. Perpetuate that franchise. Mr. Hollers' school

(Testimony of Joseph E. Cochran.)

was based on that theory. All of our boys, with the exception of Ben, Jr., who couldn't be in the business, went to this school, were taught how to run the business and were sold on the business, so that if one of us dropped out there would be no question but that we were still able to run the franchise as Chevrolet wanted it run, and therefore it wouldn't be taken away from us.

Q. What do you mean by taken away from you?

A. If there occurs a death in the Chevrolet dealerships, and a man hasn't a son or son-in-law, the dealership is sold. The dealership belongs to Chevrolet Motor Company. It is their option what becomes of it. If they don't believe the people left are capable of running it, they get a man, buy you out for your book value. There are numerous cases right in this locality that have gone that way in the last two years.

Q. With respect to the rights to profits in that business before the partnership of Cochran and Celli, which is in issue [29] here—that is, which was organized on January 1, 1948—before that time was the division of profits and losses between you and Mr. Celli equal?

A. Always equal, regardless of how the accounts stood.

Q. And was it intended, as between the two families, that each family should be entitled to receive fifty per cent of the profits, if any, and share the burden of fifty per cent of the losses, if any, is that correct?

A. That's right.

(Testimony of Joseph E. Cochran.)

Q. Now, how old was your son Donald, do you remember, at the time the partnership agreement of January 1, 1938, was entered into?

A. Seventeen, I believe.

Q. He, of course, was not then admitted as a partner? A. No, he was not.

Q. He became twenty-one in 1941, is that correct? A. Yes.

Q. And he had been going to college, had he?

A. Yes, he had.

Q. Had he also been working in the business at all? A. During all vacations.

Q. What kind of work had he been doing?

A. Different places in the parts department—not exclusively, but that is where he helped mostly.

Q. And he became a partner in 1941 when he became twenty-one [30] years of age?

A. That's right.

Q. Or about the time he became twenty-one?

A. Yes.

Q. Now, in February of 1945 there was an amendment in writing, which is Petitioner's Exhibit No. 8; this amendment was to the articles of co-partnership, in which Donald was recognized as having been admitted as a partner in 1941?

A. Yes.

Q. And the various percentages of the interests of the partners in 1938 through 1943 were all stated?

A. That's right.

Q. As established and confirmed?

A. That's right.

(Testimony of Joseph E. Cochran.)

Q. Why was Donald not admitted as a partner in 1937?

A. Well, being a minor at that time, our attorney advised us he couldn't hold property, and he thought that the easiest way to do it was to bring him in when he became of age by gift from all of us; so actually we took his advice and followed that way.

The Court: What do you mean by "gifts from all of us"? All of whom?

The Witness: Judge, however the property stood at the time, when Donald became twenty-one we were each to give enough money to bring him up as soon as we could to the status of the [31] other children. We couldn't do it in one year. I think it took three years because otherwise you would have to pay a heavy gift tax, so we just brought him along as we could.

The Court: The Cochran family or the other family?

The Witness: The Cochran family. The other family had nothing to do with it. They owned theirs outright—fifty per cent.

Q. (By Mr. Freed): Now, you have stated, Mr. Cochran, that before the partnership agreement was signed there was discussion between the members of the families and there was discussion with your daughters, too?

A. Yes.

Q. Now, in 1937, I think you said Bernice was your oldest child?

A. Yes.

(Testimony of Joseph E. Cochran.)

Q. And what was her educational background in 1937?

A. Bernice was a graduate from University of California and took a Bachelor's Degree and taught in Oakland High School—not in Oakland High School but one of the high schools in Oakland, or two.

Q. She majored in mathematics?

A. Mathematics and chemistry, I believe.

Q. And she became married Christmas Eve, 1937?

A. Christmas Eve—the date of this contract.

Q. Now, Winifred, what was her [32] background?

A. Graduated from the same school, only in art and household science, and went immediately from the University of California to teach at Brentwood; took leave of absence there and took her Master's at Columbia, and from there came to the University of Davis.

Q. And there were discussions with your daughters before this agreement was signed?

A. How is that?

Q. And there were such discussions regarding the terms and provisions of the partnership agreement, is that correct?

A. My oldest daughter, perhaps, questioned it more than anyone because she would be married right at the start of it and we had gone through some bad times; we hadn't always been solvent. We had been very much in debt in the '30's and she

(Testimony of Joseph E. Cochran.)

questioned me whether she would be liable, whether her home would be liable if we hit bad times again, and I told her she would have to take her chances, she would be liable as I was if we was unfortunate enough to go that way.

Q. After the partnership was organized, with respect to the policy of drawings from the partnership, what was the policy, if it can be so designated, of the partnership in the matter of drawings?

A. Each partner had a right to draw within reason—I don't know that the contract provided it, but we had talked over about \$5,000—Ben and I—to be the extreme that anyone [33] would go to. Naturally, we had to work it as we had money, but all partners charged anything performed, work on their cars or anything like that that they needed from the business, and each had a drawing account. However, the girls didn't use the drawing account very much at the start because they were away from home teaching and had their own money. Later on they did use it consistently—in the early years, no. We were still trying to accumulate and get money to go on and we were all economical, ourselves included.

Q. Now, it is true, is it not, that salaries were paid by the partnership to those partners who worked in the business?

A. That's right.

Q. And that included you—would you state what partners worked in the business and the policy, if any, with respect to salaries?

A. Anybody that worked in the business was

(Testimony of Joseph E. Cochran.)

paid on a straight salary agreed on between ourselves generally after talking it over with the boy. Ben and I never set the salaries, although the contract says so. We would talk it over with the boys and say, "What do you think is right?" But we never were a high salaried people at that time. We had come up from low salaries and we didn't, until later on, draw very high salaries. That applied to the boys as well as the owners.

Q. The daughters, of course, did not work in the business and did not receive any salaries? [34]

A. Well, they worked——

Q. I mean after the partnership was organized?

A. No, after the partnership, no. I don't think they did at all.

Q. Did you and Mr. Celli, as far as you know, have any outside investments, any investments other than investments in this business?

A. Outside of our homes, none—our homes or summer home—well, Mrs. Celli did, my partner's wife, but that came to her through an estate. That just came to her, but Ben and I—that was one of our understandings, that all the money we made we kept in our own business, did not invest in stocks or bonds or anything outside. That was our original agreement, the first one I wrote up, and it became a habit, because long before this agreement we had operated that way, but on our homes and that, why, we owned them and that is all.

Q. Yes. Now, after the partnership was or-

(Testimony of Joseph E. Cochran.)

ganized, to what extent, if any, was capital significant in the business? A. What was that?

Q. What was the importance of capital in your business after the—that is, during the existence of the partnership?

A. We had a crying need for capital because we operated heavy and until the war we never reached the place where we didn't have to borrow money to pay for the cars as they came from the factory, until the time we could resell them, so [35] naturally we were anxious to get in the position where we could pay cash for our cars, and we never did until we went through the war. Then we got to a place where we can pay for the cars and are there today, at the present time.

Q. Did you buy any substantial amount of real property after that partnership was organized?

A. Yes, we made our largest investment in real property after the partnership was formed.

Q. And when was that?

A. My mind is not—I think I am right when I say the spring of 1942. I could be wrong there, '42 or '43—'43. We bought an entire block.

Q. Would you please testify regarding that purchase of real property; how much did you pay for that real property?

A. \$200,000 for that block.

Q. That was purchased by the partnership?

A. Yes.

Q. That became a partnership asset, is that correct? A. Right.

(Testimony of Joseph E. Cochran.)

Q. That is, by the way, the main place of business, is it not—— A. That is.

Q. ——of the business of Cochran and Celli?

A. Yes, that is.

Q. What area does it cover? [36]

A. It covers a block bounded by Harrison on one side, Webster on the other, 12th on one side and 11th Street on the other, containing maybe 60,000 square feet of ground.

Q. And that property was improved, was it not, by the partnership?

A. It was entirely rebuilt.

Q. Do you know substantially, or just how much of an investment was in that real property altogether?

Mr. Nyquist: Objection, your Honor. We are going into matters now that were subsequent to the taxable years before the Court, and we can go into an endless amount of such questioning and it would have no bearing on the case.

The Court: He is talking about the importance of capital.

Mr. Nyquist: He is talking about investments made in improving real property——

The Court: The property used in the business.

Mr. Nyquist: But the investment was made subsequent to the years before the Court.

Mr. Freed: The witness just testified that the property was acquired in 1943. As far as that point is concerned, 1943 and 1944 happen to be years involved, and we are addressing ourselves now, as

(Testimony of Joseph E. Cochran.)

your Honor stated, to the importance of real property in this business and anything which touches upon the conduct of the parties under this partnership which will aid the Court in determining what their intent was with respect to the [37] investment in the business and the use of the investment and the importance of capital is all, we submit, most material in this case.

The Court: Well, I will let it in. I will give it consideration, the consideration I think it is entitled to. Overruled. What year are you referring to now?

Mr. Freed: The witness has testified about the purchase of this so-called block in 1943 by the partnership for about \$200,000 and I am now asking the witness if he can recall—and he has also testified that this property was substantially rebuilt, or rebuilt, and I am now asking the witness what the total investment was.

The Court: When were these improvements made?

The Witness: Improvements were made—started in December, 1945, and finished in August, 1946, your Honor.

The Court: What was the condition of the property as to improvements prior to that time?

The Witness: It was a similar business, but not laid out as we wanted it. One part of it was auto sales, one was storage, and one corner block, 100x100, was individual stores, some eight stores, and that building had to be entirely rebuilt for our

(Testimony of Joseph E. Cochran.)

purposes and the others had to be rebuilt to conform to the business we wanted to do.

The Court: Were you occupying the whole property from the time you purchased it? [38]

The Witness: Yes, we have occupied the entire block.

The Court: For business purposes?

The Witness: Yes.

The Court: The outlay of improvement, money, started in 1945?

The Witness: Yes, and it was more than the cost of the block, \$227,000.

The Court: What period of time did that cover, the expenditure for improvement?

The Witness: For improvement—we bought it in 1943. We started improvement in the latter part of 1945 and finished in 1946, with an expenditure of \$427,000 for the total investment.

The Court: I just wanted to get the segregation between the outlay for improvement and the purchase price.

The Witness: Yes.

Q. (By Mr. Freed): Bernardo Celli, Sr., died in August of 1945, didn't he?

A. That's right.

Q. And, unfortunately, it was February, was it, of 1946 that your wife died, Mabel Cochran?

A. March, the latter part of March.

Q. 1946? A. March 22.

Q. And it was Anna Celli, the wife of Bernardo Celli, Sr., who died in February of 1947? [39]

(Testimony of Joseph E. Cochran.)

A. That's right.

Q. Mr. Cochran, this is the first time, is it not, that the Treasury Department raised any issue of any kind with respect to the taxation of the income from the investments of your daughters in the partnership to your daughters, is it not?

Mr. Nyquist: Objected to as immaterial, whether this is the first time or not.

The Court: Objection sustained.

Mr. Freed: No further questions.

The Court: We will take a recess.

(Recess taken.)

Cross-Examination

By Mr. Nyquist:

Q. Mr. Cochran, I note from the stipulation of facts, Exhibit 1, a transcript of your investment accounts, that the transfers of interest from your account to your wife and children are entered under date of December 31, 1937.

Mr. Freed: May I ask that the record show the number of that exhibit?

Mr. Nyquist: Excuse me. That is Exhibit 1.

Q. (By Mr. Nyquist): Show the investments were made in the books under date of December 31, 1937, reflecting the transfers to the members of your family. Is that the date upon which you made the gifts?

A. Not if I am clear. We executed this contract December [40] 31—

(Testimony of Joseph E. Cochran.)

Q. December 31, 1937?

A. Yes, I think that is correct. It is either that or January 1. January 1st was a holiday. I don't know the exact date, but I meant it was the last day of '37. I think that is correct.

Q. The reason I am making this inquiry is your gift tax return shows gifts on December 24, 1937, and I was wondering which of those dates was the correct date.

A. Well, I wouldn't know. I have no way of testifying from memory as to that long ago. The attorney handled it. We signed a paper when he said "Sign." I don't know just as to the day it was executed.

Q. What year did you say that the partnership of Cochran and Celli was originally formed?

A. Now, you are talking about the first time we went together?

Q. When you and Mr. Celli went together.

A. Well, I said I originally bought the business and Ben came to work for me and we worked on a partnership working agreement for several years. At one time he took another little shop and run it on another street and we still continued to work together. We actually consolidated, we got money enough then so we had some fairly good sized operations, some ten or twelve men, and then we consolidated at First and Webster Streets. That was, I think, September, 1911. [41]

Q. And Mr. Celli—was not the year 1937 the

(Testimony of Joseph E. Cochran.)

most profitable year that the partnership had had up to that time? A. No, absolutely not.

Q. Can you recall what years were?

A. Surely, '28 and '29. We made \$81,000 in one year and \$84,000 the other.

Q. Then, from the period 1929 through 1937, was the year 1937 the most profitable year?

A. The way it was, each gained a little, 1935, 1936 and 1937; however, in 1938 we took a loss again.

Q. Well, Mr. Cochran, were you aware in 1937 that the total income tax burden on your family would be substantially reduced if the income were divided up among the members of your family?

A. I never even thought of an income tax in that time. I was so glad to make a few dollars, after losing for so many years, I was just tickled to death if I could make any money.

Q. You were particularly conscious of gift taxes?

A. No, only so far as I could execute it in the most reasonable manner. That is all. I was perfectly willing to pay whatever was necessary, but naturally if I could do it without spending too much money for gift taxes I wanted to handle it that way.

Q. Why did you have so much concern about gift taxes and not income taxes? [42]

A. I never made enough money that it was a big amount.

(Testimony of Joseph E. Cochran.)

Q. Had you ever paid substantial gift taxes before?

A. No, but in transferring you advise your attorney, "How can I do this with the least expense?" We still needed lots of money in the business, and his advice was a gift tax over a period of years—would be the most economical way to arrive at what I desired and my wife, too.

Q. Who was Charles E. Cornell?

A. He was a Certified Public Accountant that had our accounts at that time.

Q. Is he the man—he is the man who prepared your gift tax return for the year 1937, is he not?

A. Correct.

Q. Did you discuss the tax angle with him?

A. Never discussed anything with Charlie.

Q. Well, I notice in Exhibit 1 and Exhibit 2 that on December 31—Exhibit 1 shows increases in your investment account; Exhibit 2 shows increases in the investment account under the name of Mabel Cochran.

A. That is just turned around. The one I got, No. 1 is Mabel Cochran and No. 2 is J. E. Cochran—no, it isn't. I see up there it is Mabel Cochran. You are right, yes.

Q. Now, I notice the first entry in each of those accounts reflects a transfer from your account to the Mabel Cochran account of \$100,617.43, yes, and the following entries on the same [43] day, in each account, show transfers from each account to Sidney E. Cochran, to Winifred Cochran and to Bernice

(Testimony of Joseph E. Cochran.)

Johnson in the amounts of \$16,818.21, that amount being transferred to each of the children from each of the parent's accounts. Will you explain why you took the roundabout procedure of first transferring from your account to your wife's account and from there to the children's accounts, rather than making simply a direct transfer from your account to the children's accounts?

A. Evidently the lawyer and Charlie thought that was the right way to do it. I don't know books or bookkeeping. We simply did what they advised us to do. Charlie Cornell had the reputation of being one of the finest accountants in the city. I trusted my attorney on all details, naturally. I am not a bookkeeper. My—Freeman was in the office at that time and might be able to throw some light on it, but I simply did what they claimed was necessary to make this co-partnership, and if that was the way it was handled, it was undoubtedly handled under Cornell's advice. Why I don't know. I am not enough of an accountant to be able to tell you.

Q. Then you relied on the advice of——

A. My attorney and Charlie Cornell.

Q. Your attorney and your accountant?

A. Absolutely.

Q. As to your method of handling these transactions?

A. That's right. [44]

Q. You and Mrs. Cochran each filed a gift tax return for the year 1937. This has been stipulated in Paragraph 5 of the stipulation, that on March 15, 1938, you and Mabel Cochran each filed a gift

(Testimony of Joseph E. Cochran.)

tax return reporting three gifts in the amounts of \$16,818.21 each on each of your gift tax returns and claiming exclusions of \$15,000.00 and a specific exemption of \$35,454.63. You paid no gift tax on that transfer?

A. As far as I know we did not.

Q. That is within the amount of the exemption in each case? A. That's right.

Q. That is why the transfer was made to Mabel Cochran first, to get the benefit of the two exemptions?

A. That wasn't in my hands. It was handled by the attorney and the accountant.

Mr. Freed: I think the stipulation also recites the fact that the property owned by or standing in the name of J. Cochran was community property that belonged to him and his wife.

Mr. Nyquist: Yes, it is in the stipulation.

Q. (By Mr. Nyquist): Now, at the time of the formation of the partnership in 19—at the end of 1937, or the beginning of 1938, specifically what was your intention with respect to bringing Donald Cochran into the partnership? [45]

A. I talked about him to our family and with our attorney. When Donald became twenty-one we were to bring him in by gifts from all members of the family.

Q. Gifts of all the members?

A. Yes, until he had an equal share.

(Testimony of Joseph E. Cochran.)

Q. Until he had an equal share?

A. Yes, and doing it over a number of years, the number of years it took to do it and within the legal limits of our gifts.

Q. And that was your intention and understanding back in 1937, when the original partnership——

A. So specified—mentioned in the agreement.

Q. Now, again turning to Exhibit 1, your investment account, I note that on March 31, 1941, it shows a gift by you of \$4,000.00 to Donald Cochran and similar gifts by—the related Exhibits 2, 3, 4, 5 and 6 show similar gifts by your wife and by your three children in the amounts of \$4,000.00 each, making a total of \$20,000.00 to Donald Cochran.

Mr. Freed: 1941?

Mr. Nyquist: 1941.

Q. (By Mr. Nyquist): And then in 1942, it also shows gifts of \$4,000.00 each by you to each of your four children. Will you explain the circumstances surrounding the making of the gifts to each of your four children in 1942? [46]

A. Well, the law permitted us to give to a minor, and I think ahead of that you will find we gave to Donald Cochran and——

Mr. Freed: Pardon me just a moment. If I may ask the reporter to read back the testimony of the witness up to the point where I interrupted——

(Question and answer read.)

The Witness: I think, I know we were following

(Testimony of Joseph E. Cochran.)

a set program at that time, mother and I, to get our children an equal interest in our business, of giving each year to all children for the limit. The first year I think we were permitted to give five. We gave five as long as we were permitted to give five, and then we gave four and then we were permitted to give three. When Donald became of age it was agreed in the family we would give to him legally each year until he had accumulated an interest equal to ours, so the money given to Donald—one of them was the money I gave to him; the other was a gift that had been agreed upon in the partnership in transferring from each of us to that account, so that he could finally become on an equal share with us.

Q. (By Mr. Nyquist): Then, at the time you made a gift of \$4,000 to Sidney Cochran, Bernice Johnson and Winifred Irwin in 1942, and your wife made a similar gift of \$4,000 to each one of those children, you knew that they would at the same time make a gift of \$4,000 [47] apiece to Donald R. Cochran?

A. No, on the contrary, there was no such thing. Their gifts came ahead of that and it was not a gift, it was a way of transferring interest that had been given to them and was to be transferred to Donald Cochran when he became of age. My gift to my children had nothing to do with the money given to Donald Cochran because that was planned among ourselves at the time we made the

(Testimony of Joseph E. Cochran.)

agreement, merely handling and doing it as the attorney advised.

Q. Well, in 1942, each of the three children who were then members of the partnership made a gift of \$4,000 apiece to Donald, who was coming into the partnership——

Mr. Freed: Counsel, will you pardon me if I ask you to state the month and day in 1942 when that was done?

Mr. Nyquist: According to the record here, on March—on December 31, 1942—correction, on March 31, 1942, Sidney Cochran, Winifred Irwin and Bernice Johnson each made a gift of \$4,000 to Donald Cochran and on—excuse me, that was on March 31, 1941, and on March 31, 1942, they each made another gift in the same amount, making two gifts of \$4,000 apiece.

The Witness: And I think some in 1943.

Q. (By Mr. Nyquist): All right. Now, on December 31, 1942, did you and your wife each give a gift of \$4,000 to Sidney Cochran, Bernice Johnson and Winifred Irwin, making total gifts of \$8,000 to [48] each of those children?

A. The record substantiates the gifts. To get that clear, I will make this statement: Our program provided that we were giving to each of our children what the law allowed us to give in each of those years—\$5,000 I think the first year, then \$4,000 as long as it existed, and then \$3,000. Now, we gave that at the end of each year.

Q. And at the same time the three children who

(Testimony of Joseph E. Cochran.)

were already in the partnership were making gifts in the same amounts to Donald, were they not?

A. Only so far as to divide his interest equally to theirs, which was agreed when the original contract—it probably would have been clearer if we had handled it different but that is the way we were advised to handle it; in the original contract it so states that when he became of age that the other partners shall contribute to him until he has an equal amount.

Q. In other words, to take the Winifred Irwin investment account, for example, on March 31, 1941, and on March 31, 1942, she made gifts of \$4,000 each to Donald Cochran, did she not?

A. That's right.

Q. And on December 31, 1942, she received two gifts of \$4,000 each, one from you and one from Mabel Cochran, did she not?

A. That's right. That is exactly as it was set up.

Q. And the same was true in the case of Bernice Johnson [49] and Sidney Cochran?

A. That's right.

Q. And in 1943——

A. Didn't we give Donald the same at that time, too?

Q. Yes.

A. In other words we gave the four children each \$4,000, all at the end of each of those years.

Q. And three of those children——

A. Simply complying with the agreement. We

(Testimony of Joseph E. Cochran.)

were going to transfer to Donald his equity when he arrived of age.

Q. And I notice in January—on January 1, 1943, you and your wife made gifts of \$3,000 apiece to each of the children.

Mr. Freed: January what?

Mr. Nyquist: January 31, 1943.

Q. (By Mr. Nyquist): And you and your wife made gifts of \$3,000 apiece to each of the children. Did you know at the time you made those gifts that on the same day Winifred Irwin, Bernice Johnson and Donald R. Cochran—excuse me, Winifred Irwin, Bernice Johnson and Sidney Cochran, were going to make gifts in the amount of \$2,500 to Donald Cochran?

A. I knew that Donald hadn't gotten his full share and I knew whatever he lacked of his share there would be a gift made from the children to equal it. It had nothing to do with our gifts to our children, because, as I said before, we had a [50] plan and we followed it as advised by the attorney.

Q. Mr. Cochran, have you paid a Federal gift tax during any year?

A. No, I never have, not to my knowledge.

Mr. Nyquist: No further questions.

Mr. Freed: No questions.

(Witness excused.)

The Court: Call your next witness.

Mr. Freed: Sidney Cochran, will you take the stand, please?

Whereupon,

SIDNEY E. COCHRAN

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address please.

The Witness: Sidney E. Cochran, 8 Aztec Way, Oakland.

Direct Examination

By Mr. Freed:

Q. You are the son of Joseph E. Cochran and Mabel Cochran, are you not? A. Yes.

Q. And when were you born?

A. February 16, 1914.

Q. And what was your schooling, what was your educational background? [51]

A. Well, through the Oakland Public Schools and through the University of California, in Engineering. I graduated in 1935.

Q. And what department of engineering?

A. Mechanical Engineering, Automotive Engineering under Mechanical.

Q. And when did you first begin to work in the business of Cochran and Celli?

A. Well, on a full time basis in 1935, but naturally we grew up in the business, the business was going when I was born, so summer vacations and after high school—I worked a couple of semesters after high school in the garage and Saturdays, naturally. In other words, up until that time I had been in all different departments of the business.

(Testimony of Sidney E. Cochran.)

Q. You said, "We grew up in the business." Who are you referring to when you say "we"?

A. Well, particularly the Celli boys that were the same age or about the same age as I was—Lloyd Celli and Ben Celli, Jr.—were together at the business quite a bit of the time, and that is what I meant by "we."

Q. Did your sisters grow up in the business?

A. Yes, they did, and were working summer vacations to relieve the office personnel when they took their vacations.

Q. During the growing up period of your life at home, was the business a matter of discussion at all at home among the [52] sisters and your father and mother—that is, family discussion?

A. Well, it was probably the main topic of discussion at home. In other words, it was a family business, it was one of the main things that came up all the time, naturally.

Q. Now, did you train—was your engineering training in college directed to the goal of going into the business and using that engineering training in the business? A. Not necessarily, no.

Q. You got out and graduated from college in the depression, didn't you?

A. Just after the depression, yes.

Q. And then, did you go to work permanently or steadily in Cochran and Celli?

A. No, I worked for Pacific Gas and Electric Company for a short time.

Q. I don't know if you testified to this or not—

(Testimony of Sidney E. Cochran.)

when did you begin working steadily for Cochran and Celli?

A. I think it was the end of 1935 or the beginning of 1936. I am not positive of the date.

Q. At that time were any of the Celli boys working in the business?

A. Yes, both Lloyd and Ben Celli were working in the business at that time.

Q. Regularly? [53] A. Regularly, yes.

Q. However, your sisters were not then working in the business, were they?

A. No, I think they were both teaching at that time, say, the beginning of 1936—I am sure they were.

Q. And your father and Mr. Celli, Sr., were the owners of the business in 1935 and 1936 and 1937, were they not? A. That is correct.

Q. And did you work under them or did you work under someone else while you were there?

A. Well, when I started, naturally I worked under—I was in the service department; I worked under the service manager who was managing that department when I started. That is, the service salesman.

Q. And in the year 1937—let us come, say, to the latter half of 1937—what were your functions in the business?

Mr. Nyquist: Objection, your Honor. The respondent has admitted that these boys were partners and it is not going to add anything to the con-

(Testimony of Sidney E. Cochran.)

sideration of the case to go into all the details of their experience.

The Court: The question of the bona fides of the partnership doesn't affect the sons. I understand they are recognized as partners. What is the materiality of this?

Mr. Freed: I think in order to ascertain the true intent of these people—at least that is my view—it would be [54] helpful to have a complete picture of this thing, what was done. I don't wish to take up any unnecessary time, and I can see what counsel is driving at. I merely want to bring out that these children, the sons, had individual important duties in the business. That should be understood in connection with the provisions of the partnership agreement so far as such concepts as control and management are concerned on the part of the partners.

Mr. Nyquist: I will stipulate the sons had important duties in the business.

Mr. Freed: Will you also stipulate the sons signed checks, hired and fired, and acted on their own without consulting the so-called managers, the fathers, of the business and that they acted in a manner which is entirely different from what respondent asserts, that paragraph 5 of the partnership agreement would seem to hold. Would you stipulate to that?

Mr. Nyquist: What do you mean, would I stipulate——

Mr. Freed: That their conduct under paragraph

(Testimony of Sidney E. Cochran.)

5 is subject to—explains the meaning of paragraph 5 in the sense that the managers, the two parents, and the senior partners, reserved that right to make decisions for business purposes and that it was not a personal right which they reserved to control the gifts given to the children.

The Court: You are not stipulating to that?

Mr. Nyquist: Well, your Honor, under paragraph 5 the [55] senior partners reserved the control and also reserved the right to delegate certain of it. I have no doubt but what they delegated certain of it to these boys and I am willing to concede that, but they still reserved the right to control. I am willing to stipulate they authorized the boys to sign checks, yes.

Mr. Freed: Let us find out how the authority, if any, was given to the boys, whether the boys took it or whether it was given to them.

The Court: You are not contending on the part of the Petitioner, as I understand it, that the seniors, Messrs. Cochran and Celli, had the power to do all the things that paragraph 5 gave them the right to do? In other words, they could withhold the right of any of the junior partners to sign checks or to do anything else which paragraph 5 said that they themselves had the sole, exclusive right to do?

Mr. Freed: Under certain circumstances, if it was for the good of the business, yes, that would be our position. It was merely a legal reserved power for the good of the business, for the good

(Testimony of Sidney E. Cochran.)

of all the partners, including themselves, limited by other provisions of the agreement and the true meaning of which is explained by what the parties did with reference to paragraph 5 and the other provisions of the agreement. May I add this, your Honor, in cases of this kind, as we well know, it isn't the written word, it isn't those fine technicalities which are [56] controlling in matters of this kind; as I understand it, it is what the parties did, taking into account, of course, whatever legal instruments they signed, to ascertain what their intent was.

The Court: And also what they had the power to do.

Mr. Freed: Yes, what they had the power to do and what the purpose of it was.

The Court: Well, just what is your purpose? Nobody is disputing, as I understand it, that Mr. Sidney Cochran signed checks and did certain other things that were reserved, the power to do which was reserved, by the senior partners. Now, just what is your position?

Mr. Freed: I merely asked the question, to which counsel objected, what was his position in 1937. I wanted to see what position he occupied and what the partnership agreement meant to him when he signed it, and I could cover that very rapidly. I didn't intend to go so far afield. I perhaps should have asked him what was your position in the business in the latter part of 1937. Do you have any objection to that, Counsel?

(Testimony of Sidney E. Cochran.)

Mr. Nyquist: I have no objection to an individual question, but I have an objection to taking up time on a whole line of questions on an immaterial point.

Mr. Freed: I didn't expect we would get into an awful lot of discussion on that question. May I ask this question, with your consent, what was Mr. Cochran's position in the latter [57] part of 1937?

The Court: You don't have to ask his consent. You just ask the question. He may object if he wants to.

Mr. Freed: Then I will reframe my question and ask the witness——

Q. (By Mr. Freed): What was your position in the business of Cochran and Celli in the latter half of 1937?

A. I was assisting in the sales department. I don't know whether I had an official title at that time. I hadn't been in the sales department very long.

Q. Did you say assisting?

A. I was one of the assistants in the sales department.

Q. Who was your superior?

A. Ben Celli, Jr.

Q. Ben Celli, Jr.? A. Right.

Q. Now, I will refer you to Petitioner's Exhibit No. 7, the articles of co-partnership entered into the first day of January, 1938. You have read that agreement, have you? A. Right.

Q. Before you signed it? A. Yes.

(Testimony of Sidney E. Cochran.)

Q. Did you participate in discussions with members of the family before signing the [58] agreement?

A. Yes, I did.

Q. Was the agreement signed on the date of the agreement or before the date of the agreement?

A. Before the date of the agreement.

Q. Do you know about when it was signed?

A. No, I don't. I would say it was in the latter part of 1937.

Q. What was your understanding of paragraph 5 of that agreement before you signed it?

Mr. Nyquist: Objection, your Honor. His understanding of paragraph 5 is irrelevant.

The Court: Well, there is no ambiguity about it, is there?

Mr. Freed: Beg pardon?

The Court: There is no ambiguity in the language of paragraph 5, is there?

Mr. Freed: No, it isn't for that purpose. I will reframe my question.

Q. (By Mr. Freed): What was your intent——

Mr. Nyquist: Same objection, your Honor.

Mr. Freed: That is what we are driving at.

The Court: I think it is immaterial. I think that so far as particular partner relationships to the partnership are concerned—— [59]

Mr. Freed: I will withdraw that question and ask——

Q. (By Mr. Freed): What was the purpose of paragraph 5?

Mr. Nyquist: I object.

(Testimony of Sidney E. Cochran.)

The Court: Well, I will let him answer that. You may answer. I will overrule the objection.

The Witness: Well, the purpose, as I saw it at that time, was that in any business you can't have nine or—I think it was nine at that time, nine managers. You have to have a head of the business or the business head has to be delegated to a certain number of people in order to make the business work efficiently. For that reason the two senior partners, who had been in the business and had the experience of running the business, were delegated as managers to decide policy matters, with regard to—particularly where the other partners came in. In other words, somebody had to be the arbitrator if disputes came up; if both the junior partners wanted the same job, somebody had to settle that, and I am sure that was the reason that we saw at that time for delegating managers in the business.

Q. (By Mr. Freed): I don't know if the record shows this or not, but, Mr. Cochran, your family, the Cochran family, is not related—that is, has never been related to the Celli family, has it, by marriage? [60] A. No.

Q. And was there any social relationship at all between the Cochran family and the Celli family, or was it merely a business relationship?

A. The only social relationship was on business parties, or something like that, but not socially outside of business connections.

Q. Did the families visit each other?

A. Very seldom.

(Testimony of Sidney E. Cochran.)

Q. How did you acquire your interest in the partnership of Cochran and Celli?

A. By gift from my mother and my father, by gifts, various gifts. Pardon me, I will amend that; that was the original interest and subsequent interest was by gift and by income from the business. In other words, my share in the profits.

Q. And that—was that the way your sisters acquired their interest in the partnership, too?

A. That is correct.

Q. Now—withdraw that. You and Ben Celli, Jr., and your respective wives signed an instrument entitled “Declaration of Trust” which is Petitioner’s Exhibit No. 9 in this case. I will show you a copy of that; do you remember signing that declaration of trust? A. Yes.

Q. And that declaration of trust is attached to the [61] enumerated parcels of real property, up to and including parcel 10. Will you state the purpose of that arrangement?

A. Well, naturally, in any transfer of property it is necessary to have the owners of the property at that time handle the details of the transfer, particularly signing the papers and so on and so forth for one reason; and the actual physical handling of the property—it eliminated the number of signatures required on the transactions to four by having us the trustees for the property. As far as I can see, it was just an easier way to handle it than having the property owned by all of the partners it was owned by—I mean, we acted as trustees for them.

(Testimony of Sidney E. Cochran.)

Q. And you and Mr. Celli have acted as trustees, holding the title to that real property, for the benefit of your sisters as partners as well as all other partners?

Mr. Nyquist: Objection. The trust instrument speaks for itself.

The Court: Yes, the trust instrument, I think, will speak for itself.

Q. (By Mr. Freed): Your mother, Mabel Cochran, died in the early part of 1946?

A. Yes, that is true.

Q. Now, who inherited your mother's interest in the partnership? [62]

Mr. Nyquist: Objection, your Honor. We are going far afield again in subsequent years.

The Court: That is a question of law, isn't it?

Mr. Freed: Well, I will withdraw that.

Q. (By Mr. Freed): Was your mother's estate distributed—you were one of the executors, were you not, of your mother's estate?

Mr. Nyquist: Objection, your Honor. These matters took place two years after the years before the court.

The Court: What is the materiality of it, Mr. Freed?

Mr. Freed: I think it is quite material, your Honor. We are endeavoring to show what these parties did with respect to the interest in the partnership. We wish to show that Mabel Cochran left her interest in the partnership to her four children. It did not go back to J. E. Cochran as sometimes

(Testimony of Sidney E. Cochran.)

appears to be the case in some of these family partnership cases. It was distributed to her four children equally.

The Court: It was her property she left?

Mr. Freed: Yes, that's right.

The Court: And either by provisions of the will or by distribution under the statute it would go as so provided——

Mr. Freed: Had she left a will—and her two sons were executors under the statutes—it would go to her husband——

The Court: I don't see how that could affect the situation of the relationships of the partnership prior to that time. [63]

Mr. Freed: It shows the course of conduct. This will is a will made long before her death. We can bring that out, and that the property was left to her four children. It wasn't left to her husband.

The Court: I will sustain the objection.

Mr. Freed: If your Honor please, I wish to make an offer of proof for the record.

The Court: All right.

Mr. Freed: We offer to prove that Mabel Cochran, the mother of this witness, Sidney Cochran, the deceased—I suppose in some respects what could be called the deceased petitioner—made a will in 1938 leaving her interest in the partnership to the four children in equal shares and none of it was given in this will to her husband or anyone else except those four children; and that Mabel Cochran died in the spring of 1946 and that was

(Testimony of Sidney E. Cochran.)

her last will and testament; and that Sidney Elmer Cochran and Donald Robert Cochran, her two sons, were the executors of that will and that that estate was distributed by the executors and her partnership interest in Cochran and Celli was distributed equally to her four children, Sidney Elmer Cochran, Donald Robert Cochran, Bernice Cochran Johnson and Winifred Cochran Irwin.

The Court: The offer is denied. The record shows that the decedent died in 1946?

Mr. Freed: Yes, in March of 1946. [64]

The Witness: That is correct.

Mr. Freed: If your Honor please, I am always very sensitive to the record and Mr. Gebauer, my assistant, points out perhaps it wasn't stated clearly enough for the record that one of our purposes in offering this evidence was that it has a bearing on the element of control of the partnership interests and has a bearing on the power of disposing of the partnership interests as to whom it should go to and so forth. It all is part of the picture of these gifts.

The Court: I understand that Mrs. Cochran owned half of this partnership property to begin with, that is, half of the Cochran interest in the partnership property, by virtue of the community laws of California?

Mr. Freed: Yes.

The Court: Regardless of whether there was a partnership between her and her husband or not?

Mr. Freed: Yes.

(Testimony of Sidney E. Cochran.)

The Court: So in any event she would own that property whether it is community interest that she had or whether it is a partnership interest and I do not think that question of disposing—she can certainly make disposition of her own interest in community property and I am not sure just what the law of California is as to what disposition would have been made of the property under decedent distribution status if no will had been made—probably all would have gone to her four [65] children anyway.

Mr. Freed: No, it wouldn't. It would have gone to her husband.

The Court: I was not advised of that. I didn't know. You mean it would go to her husband to the exclusion of the children?

Mr. Freed: Yes.

Mr. Nyquist: You mean in the absence of a will?

Mr. Freed: In the absence of a will, yes.

The Court: Well, anyhow, she had the right to make distribution by will as owner under the Community Property Law of the State of California.

Mr. Freed: That's right.

Q. (By Mr. Freed): I will call your attention to July 1, 1948, Mr. Cochran. At that time there was a reorganization of the partnership business of Cochran and Celli, was there not? A. Yes.

Mr. Nyquist: Objection. Any reorganization that took place four years after the years before the court and when circumstances were materially changed by the death of three of the senior mem-

(Testimony of Sidney E. Cochran.)

bers of the families is completely irrelevant as far as this case is concerned.

Mr. Freed: May I reply to that?

The Court: Yes. [66]

Mr. Freed: In the first place, I would like to say that this case is somewhat peculiar, in that it goes back a considerable number of years to begin with, calling for these people to remember what happened a number of years before the years in question as far as the time element—relationship is concerned. Now, with respect to what the parties did after the partnership agreement, we are concerned here, obviously, with the question as to whether or not bona fide completed gifts or partnership interest investments were made to the daughters and any evidence which will show that the investments given to the daughters and kept on the books of the partnership and treated by the—and acts of the partners with respect to those investments thereafter which will throw some light on whether or not the girls actually owned those investments—the daughters did as much as the other partners did—is material and we are, of course, directing ourselves to the question of whether or not the daughters received exactly what the other partners received. When the partnership was reorganized and net worth in that partnership was transferred to a corporation, if they received stock for those investments just as the other partners did, if they received that stock in the same respect as the other partners did, and it became theirs in the

(Testimony of Sidney E. Cochran.)

same sense it did—as it became the property of the other partners and has always been such and there have never been any restrictions of any kind attaching to that stock, then we submit [67] it is most material to this case and the case would be incomplete without it.

The Court: I think it is highly doubtful whether it is really important or material here, but I am going to overrule the objection and let you show that this interest was recognized through this transfer of the interests of the partnership to the corporation and the issuance of stock representing the several interests. I will overrule the objection.

Mr. Freed: It was my understanding, Counsel, I was calling the witness' attention to that time of July 1, 1938, and asked him whether he recalled the reorganization of the partnership of Cochran and Celli at that time.

The Witness: Yes, I do recall.

Q. (By Mr. Freed): And what happened with respect to the reorganization of that business at that time?

A. The operating part of the business, that is, the Chevrolet franchise, our tire business and our body and trailer business—in other words, anything that was in the operating, manufacturing and distributing business was incorporated at that time into the Cochran and Celli Corporation.

Q. That was under the laws of California the corporation was formed? A. That's right.

(Testimony of Sidney E. Cochran.)

Q. And the stock was issued, capital stock of that [68] corporation was issued, was it?

A. That is true.

Q. And you received some of that capital stock?

A. I did, yes.

Q. And the other partners received capital stock?

A. All the partners in Cochran and Celli at that time received stock in the new corporation. I am not sure on the distribution—on the amount.

Q. But your sisters, Bernice Cochran Johnson and Winifred Cochran Irwin, received capital stock of the corporation for their net worth in the business which was transferred to the corporation, is that correct?

A. That is correct. They received amounts equal to what I received and Donald received. In other words, the business was split in two. As I understand it, there was a corporation and a partnership, which retained the building property and our finance division, which was at that time—in other words, it was a division between the operating companies and the property companies, essentially.

Q. I will show you what purports to be the stock certificate book of Cochran and Celli, a California Corporation, Mr. Cochran, and ask you whether you can testify from the stubs of that book how many shares of stock were issued to the—issued and delivered to the partners of Cochran and Celli?

A. All of them? [69]

Q. All of them.

(Testimony of Sidney E. Cochran.)

Mr. Nyquist: Objection, your Honor. The witness has already testified that stock was issued in proportion to partnership holdings. There is nothing to be added by going into all the details.

The Court: I do not think the number of shares makes any difference. All of the stock was issued to the former partners?

The Witness: That is correct. Actually, if I can answer that, it was distributed equally to the Cochran and Celli families; in other words, half to Celli and half to Cochran.

Mr. Freed: If your Honor please, I am going to offer into evidence—Mr. Goebel is a Certified Public Accountant for the company, but, in the interest of time I would like to offer this, which is a consolidated balance sheet, dated June 30, 1948, of Cochran and Celli, a Partnership, with a list of all of the investment accounts of all of the partners as of June 30, 1948; the opening balance sheet of July 1, 1948, of Cochran and Celli, a California Corporation; and the balance sheet dated July 1, 1948, of Cochran and Celli Investment Company, the partnership, which continued to exist under a changed name. We could save considerable time——

Mr. Nyquist: Objection, your Honor. It adds nothing material to what is already in the record.

The Court: I will sustain the objection. [70]

Mr. Freed: As I understand it, for the record, the objection was made, was based solely on the ground of materiality?

The Court: That is what I ruled on. I didn't

(Testimony of Sidney E. Cochran.)

hear any objection made as to the authenticity of it.

Mr. Freed: No further questions. You may take the witness.

The Court: Will your cross-examination take some time?

Mr. Nyquist: Not more than two or three minutes, your Honor.

The Court: All right. Proceed.

Cross-Examination

By Mr. Nyquist:

Q. Mr. Cochran, on direct examination you gave some testimony regarding the purpose behind paragraph 5 in the partnership agreement. I am not certain that I completely understood what your testimony purported to be; were you testifying as to your purpose or your understanding with respect to paragraph 5?

A. My understanding of the purpose of paragraph 5.

Q. You were not testifying as to the purpose or understanding of any other individual?

A. No, I can't do that.

Mr. Nyquist: No further questions.

The Court: That is all.

(Witness excused.)

The Court: We will adjourn until 2:00 o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m.) [71]

Afternoon Session—2:00 o'Clock P.M.

The Court: You may proceed.

Mr. Nyquist: Apparently Mr. Freed and Mr. Gebauer have not returned.

The Court: Well, we will wait a minute.

You may proceed. Call your next witness.

Mr. Freed: Mrs. Johnson.

Whereupon,

BERNICE COCHRAN JOHNSON

was called as a witness on behalf of the Petitioner, and, having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: Bernice Cochran Johnson, 5145 Proctor Avenue, Oakland.

Direct Examination

By Mr. Freed:

Q. Mrs. Johnson, you are the person designated as Bernice M. Cochran in Exhibit 7 and evidence, referring more specifically to the articles of co-partnership dated January 1, 1938? A. I am.

Q. What was your date of birth?

A. August 20, 1910.

Q. In the latter part of 1937, where were you living?

A. I was living at home, which was at that time—was 8 Aztec Way, Oakland. [72]

Q. With whom were you living at that time?

(Testimony of Bernice Cochran Johnson.)

A. Members of the family at home, with my mother and father and brother, Donald.

Q. Was Sidney already married?

A. Sidney was married. Winifred was working and came home week ends. She lived in Brentwood.

Q. Were you following any occupation at that time?

A. Yes, I was a teacher in the Oakland Schools at that time at Fremont High School. I was a counselor and teacher.

Q. Were you self-supporting at that time?

A. Yes.

Q. And you had graduated from the University of California? A. Yes.

Q. What degrees did you have?

A. I graduated in 1931 and received my B.A., and the following year I received my Secondary Credential and my Master's in mathematics.

Q. Master's Degree? A. Yes.

Q. During the years up to and including 1937, as you were growing up and living with the family, did you become familiar as a family matter with the business of Cochran and Celli?

A. We were brought up with the business. It was an everyday topic of conversation. I don't think there was a dinner that business wasn't discussed; that is, how it was going, various business [73] matters.

Q. Now, prior to the time that you signed the articles of co-partnership, Petitioner's Exhibit 7, did you read that agreement?

(Testimony of Bernice Cochran Johnson.)

A. Yes, I read it.

Q. And, by the way, when was it if you recall that you signed the articles of co-partnership?

A. You mean the date?

Q. What month, for example?

A. To the best of my memory, it was about November of 1937. The articles came into effect on January 1, 1938.

Q. Where was it that you signed the agreement?

A. We signed the agreement at the attorney's office, Mr. Wilson's office, of the firm of McClymonds, Wells and Wilson in Oakland.

Q. Did you participate in any discussions with members of the family regarding the agreement prior to the time that you signed it?

A. Yes, from the time of its first consideration it was discussed in the family at home. We had many conversations.

Q. What was the name of the attorney at whose office you signed this agreement?

A. Mr. Wilson, Mr. Leo Wilson.

Q. Leo Wilson; do you recall who else was present at the time you signed the agreement?

A. I believe that it was my father, mother, my sister and myself and the attorney. [74]

Q. Did you go into any of the provisions of the agreement to ascertain the meaning of them prior to the time that you signed the agreement?

A. Well, the provisions were discussed at home; that is, the setup of the partnership, and then at the time we visited the lawyer's office we went over

(Testimony of Bernice Cochran Johnson.)

with him in great detail and asked questions so that we were sure we understood the provisions, the legal terminology of them.

Q. To your knowledge, was any reference ever made to the subject of income taxes in connection with the making of this agreement of partnership?

A. I didn't ever hear income taxes mentioned.

Q. Did you understand how you were acquiring an interest in the partnership of Cochran and Celli?

A. Yes, I understood that we would receive gifts from my mother and from my father of an interest in the business, which would make our investment in the business by the way of gifts from them.

Q. Did you raise any questions at all concerning the effect of the partnership agreement on you prior to the time you signed it?

A. Yes.

Q. Do you recall any such matters as that?

A. Well, I was being married at the same time the partnership was being formed and so I was a little bit concerned, [75] particularly about the liability. We had just come through a depression when business hadn't done very well, so I found out what the liability consisted of, talked it over with my husband-to-be and decided to become a co-partner.

Q. Do you recall the purpose of that provision of the agreement, more specifically the paragraph numbered 5 which appointed your father and Bernardo Celli, Sr., the managers; do you recall that provision of the agreement?

A. Yes.

Q. Now, would you state the purpose of that

(Testimony of Bernice Cochran Johnson.)

paragraph according to your knowledge of it, in signing that agreement?

A. I can't remember the exact paragraph stressed. My understanding was that for the best interests of the business, that is, so that it could run most successfully, my partners—of course, nine partners were an unwieldy number, so that it was better to have one representative from each family; that is, my father would represent our family and Mr. Celli would represent his family, in order to run the business for the best interests of all parties. I thought that the difference in weight of the families as far as the membership in the partnership had something to do with making that provision.

Q. In what respect as to the difference in numbers or weight?

A. At the time of the forming of the original co-partnership the Cochran members were five and the Celli members [76] were four, and when Don became of age he would become the sixth Cochran member so that we outnumbered the Cellis. There had to be an equal representation between the two families and it was natural, because of the two senior members—they were the ones appointed at that time.

Q. Following the organization of the partnership and the gift or gifts to you and your sister from your mother and your father, what did you regard as your contribution to the business, to the partnership, following that time?

A. My contribution I thought was equal to that

(Testimony of Bernice Cochran Johnson.)

of the other partners in that I had a capital investment in the company which was earning capital for the business, and also I left the profits in the business to build the business up to the present size. That was the policy we all followed.

Q. Did you have any occasion to keep in touch with your investment in the sense to know what was happening to it according to the books and financial reports of the business after the time the partnership was organized?

A. Yes, I could at any time have asked or investigated; as a matter of fact, probably once a year, after the yearly reports were made up I saw the financial statement of the business and particularly the standing of my investment. Sometimes I did that at the office at Fifth Street. I would come up there and be told that the books were ready and I would look at them, and later on I had the reports—saw them at home. [77]

Q. And I believe you testified that you left your investment in the business?

A. That is correct.

Q. Could you have withdrawn your investment?

A. Yes. I understood that from the beginning, that it was my money and that if I needed it for anything or wanted to, if I wanted to withdraw it I was free to do it. Of course, it was a good investment and I have a great interest in Cochran and Celli, so it was left there except for such withdrawals that I deemed necessary. During all this

(Testimony of Bernice Cochran Johnson.)

time I was married, my husband was making an adequate salary. We saved during all those years on his salary. There wasn't any need for withdrawals during the first years. Later on we withdrew more money, more and more.

The Court: You are not referring to the original capital invested?

The Witness: I could have withdrawn the capital, yes. There were provisions in the co-partnership at any time I could withdraw money if I wanted to.

The Court: You could withdraw from the partnership and take your investment out of it?

The Witness: Yes, I could have retired and given notice and there are provisions in the partnership wherein I could receive my total investment over a period of five years. [78]

Q. (By Mr. Freed): You made some reference to withdrawals. During these years that we have before us, 1942, 1943 and 1944—excuse me a moment.

Mrs. Johnson, referring to Petitioner's Exhibit No. 13, which is the summary of annual withdrawals from your account on the books of the partnership, I believe that you testified that as the years went on you increased your drawings?

A. Right.

Q. That is, as the years went on? A. Yes.

Q. Now, will you state some of the purposes for which you made withdrawals?

A. Starting——

(Testimony of Bernice Cochran Johnson.)

Mr. Nyquist: Objection, your Honor. I object to the question that broadly stated. If it is confined to the years up to 1944 I have no objection, but if it is for the purpose of withdrawals subsequently, I think that they are irrelevant.

Mr. Freed: At this time I am referring to Exhibit 13, which only includes 1944. I have no intention of referring to any years thereafter with this question. This question is limited to up to the year 1944.

Mr. Nyquist: No objection if the question is so limited.

Q. (By Mr. Freed): I am referring to this exhibit. Look at it. Starting with 1937—1938, it started at 1938. There are no withdrawals [79] in 1938, and in 1939 there were \$52.33 withdrawn for taxes, 1940, \$129.61 withdrawn for taxes; 1941 there was \$621.87 for taxes, and \$4,000 as a gift to your brother, Donald. Then, in 1942—let's look at 1942. Do you remember—1942, by the way, refers to \$2,314.04 for taxes, and there was a gift to your brother, Donald, wasn't there?

A. That's right, of \$4,000. Then, we also received \$1,000, each of the partners, at the end of that year, received \$1,000, at the end of 1942, from the business.

Q. By "we," you mean all of the members of the Cochran family?

A. I believe so. I know the four children did and the Celli boys received \$2,000 each and I believe the senior partners, the parents, also received some,

(Testimony of Bernice Cochran Johnson.)

but I am not sure. Then, in 1943, we gave a gift to Don of \$2,500 and then business was good and about the middle of the year it was decided that we would each receive—that is, my sister and myself that I know of—\$100 a month from our drawing account, and from then on to the end of the year we received that. The cost of living was going up in that year. At the end of the year we received a lump sum of \$600, so during that year we received \$100 a month and we continued to draw that much until—let's see, that was in 1945—about the middle of the year, we received \$200, then we received \$250—we have made those withdrawals all through those [80] years.

Q. I am not sure whether the record shows it or not, Mrs. Johnson, but did you receive an executed copy of that partnership agreement?

A. Yes, I received one signed by all the partners.

Q. You also signed another agreement, which is an exhibit in evidence here, an amendment to the partnership agreement, Petitioner's Exhibit No. 8. That was dated February 28, 1945. Donald was a party to that?

A. Yes.

Q. And you received a copy of that, did you?

A. Yes, I received a copy.

Q. Did you testify as to whether or not you received the annual financial reports from the partnership? I don't remember, did you?

A. Financial statements?

Q. Yes.

A. Yes. During this period I believe that I did.

(Testimony of Bernice Cochran Johnson.)

I have seen them and had access to them, and during the later years—I am sure that in 1944, I had the financial statement for that, and in the years just before I can't remember.

Q. Yes. Now, on July 1st, 1948, you transferred a substantial part of your interest in the partnership to Cochran and Celli, a California Corporation, did you not? A. That's right.

Q. And you received shares of stock from the corporation [81] for that share of net worth which you transferred to the corporation, did you not?

A. Yes.

Q. Do you remember how many shares you received?

A. Well, 768 $\frac{3}{4}$ shares, at about a par value of \$100 a share.

Q. You continued to remain a partner in the partnership, did you not, after—that is, in association with the same partners; that is, the partners then, who were partners on July 1, 1948?

A. You mean——

Q. What happened at that time?

Mr. Nyquist: Objection, your Honor. There is no point in going into such great lengths as to these matters in 1948 and subsequently.

The Court: Well, it is rather remote, I think, but I will overrule it.

The Witness: Well, at that time it was decided for the best interests of the business that the operating part of the business, the Chevrolet dealership and related parts of the business, be formed into a

(Testimony of Bernice Cochran Johnson.)

corporation, and steps were taken to make that part of the business a corporation. The individual partners' shares in the business were then translated into stock in the corporation and we received that. Part of our interests remained in the partnership, which held the real [82] property, the buildings and land, and the financial department was also kept in that division and still is. About half of our interests.

Q. (By Mr. Freed): The name of the partnership was changed, was it?

A. Yes, it became the Cochran and Celli Investment Company, the partnership.

Q. And the corporation continued——

A. As Cochran and Celli.

Q. In addition to your testimony regarding your receiving or having access to and reading financial reports of the corporation, did you keep in touch with the business of the partnership by consulting any of the other partners during the period, say, from January 1, 1938, up to the end of 1944?

Mr. Nyquist: Objected to as leading.

The Court: Sustained.

Q. (By Mr. Freed): What, if anything, did you do—what you have testified to—in the sense of showing an interest in the partnership?

A. Well, for instance, I would come down to the garage, look around to see what kind of service people were getting, and if I didn't think things were going right I would let the people know who were responsible for that. I would ask different people

(Testimony of Bernice Cochran Johnson.)

in the business, whenever I was down there, [83] about different phases of the business, how things were going, and also whenever I was with any of the other partners the business was discussed. We also—any problem coming up was discussed, any labor situation or anything to do with the factory, number of cars they were able to get. Of course, during that year there were no cars delivered but the storage problem was something, keeping those cars in good condition.

Q. What year are you referring to now?

A. This was during the war years. The previous years the same thing was true. That is, family business was discussed whenever the family was together, and I asked questions. I was interested in my investment. I wanted to be sure everything was going along to my best interests as well as the best interests of the business.

Mr. Freed: You may take the witness.

Cross-Examination

By Mr. Nyquist:

Q. Mrs. Johnson, did you regard your investment in this partnership as a good, sound investment?

A. I certainly did, and the years have borne me out, I think you will admit.

Q. And were the operations of the partnership conducted harmoniously among various members of the two families that were involved?

(Testimony of Bernice Cochran Johnson.)

A. Yes. I have never heard of any dispute. Everything [84] is talked over and decided amicably.

Q. Did you believe that was the way it was going to work out at the time you entered into the agreement in 1937?

A. At that time I could see no reason that that wouldn't continue. I believe a provision was made in the partnership agreement if anything like that did come up we would look at all sides of the problem——

Q. But you at that time had no real expectation you would have any occasion to withdraw your capital from the business?

A. I didn't, not at that time.

Q. I note from the investment accounts that you made gifts of \$4,000 apiece to your brother, Donald Cochran, on March 31, 1941, and March 31, 1942, and another gift of \$2,500 on January 31, 1943.

A. That's right.

Q. Will you explain the circumstances surrounding the making of those gifts, how that came about?

A. Well, from the beginning it was understood that the children were to share equally in the business and we knew when Donald became of age—that was our understanding among ourselves—he would be taken into the business and would receive a share equal to the rest of the children's, and that was the means of attaining that end.

Q. You mean the means was through, the par-

(Testimony of Bernice Cochran Johnson.)

ents and the other children transferred interest to Donald, and through the [85] parents transferring interest, additional interest, to the children to——

A. Well, of course, the parents' transferring their interest to us was an overall pattern at the time Donald became of age. I thought it was a good idea personally because it gave us the feeling we were all taking Donald into the partnership.

Q. But the transfers, the two \$4,000 transfers, from your parents to you which were made at about the same time, that is, within the year following the two gifts of \$4,000 from you to Donald, did you have any—was there any understanding that existed at that time with respect to these gifts?

A. No, the first gift was made—Don became twenty-one and we each gave him \$4,000 from our share of the investment and then a year later we gave him another \$4,000. At that time I knew nothing about receiving something additional from my father. It had been some years there between gifts, as you will see if you look. It was December when we were given \$4,000 from our parents. We gave Don \$4,000 in March of 1941 and March of 1942.

Mr. Nyquist: I have no further questions.

Mr. Freed: No further questions.

The Court: That is all.

(Witness excused.)

The Court: Next witness. [86]

Mr. Freed: Mrs. Irwin, please.

Whereupon,

WINIFRED COCHRAN IRWIN

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: Mrs. Winifred C. Irwin, 535 Oak Avenue, Davis, California.

Direct Examination

By Mr. Freed:

Q. Mrs. Irwin, you are the same person designated as Winifred Cochran in Petitioner's Exhibit 7, which is the articles of partnership of Cochran and Celli dated the first day of January, 1938?

A. Yes.

Q. When were you born, Mrs. Irwin?

A. March 10, 1912.

Q. And what is your educational background?

A. I am a graduate of the University of California, with a secondary credential in the State of California in art and decorative art, and I have a Master's Degree from Columbia University in New York City.

Q. Where were you living in 1937?

A. I was living in Brentwood, California, taught school, but I was home on week ends. [87]

Q. How far is that from Oakland?

A. Fifty miles.

Q. Your home was in Oakland, was it not?

A. Yes. My permanent residence was Oakland.

(Testimony of Winifred Cochran Irwin.)

Q. When did you begin—when did you go to Brentwood, let me put it that way?

A. I went to Brentwood originally in 1935—1934, after I graduated from college.

Q. And in 1937 you were self-supporting, were you?

A. Yes.

Q. And you were not yet married?

A. No.

Q. Up to January—were there any periods of time—withdraw that.

Were there any occasions prior to January 1, 1938, when you did any work in Cochran and Celli, the business of Cochran and Celli?

A. Well, up until—through my freshman year in college I worked at Cochran and Celli in the summertime, in the office. I generally took someone's place who was on vacation. However, there were positions such as receptionist, telephone operator or file clerk; then also I went to Cochran and Celli during those years during the inventory period, in January, when we also had vacations at school.

Q. Did you receive any compensation for your work? [88]

A. Yes, I did.

Q. Did you take any training or did you go to any school or—aside from those you mentioned—that is, for a commercial purpose?

A. No, only in high school I did take some commercial courses, mainly typing and office experience courses.

(Testimony of Winifred Cochran Irwin.)

Q. Did those courses have any relationship to the work you were doing in Cochran and Celli?

A. Well, perhaps, only in so far as it might have helped me at the times that I worked there. It was a similar type of work.

Q. In the latter part of 19——. Withdraw that.

Do you remember approximately when it was that you—what month of 1937 you first saw this typewritten document called Articles of Co-partnership, Petitioner's Exhibit 7?

A. Well, it was in the latter part of 1937. It could either be the late part of November or the early part of December of that year.

Q. Do you remember about when it was that you signed that agreement?

A. Well, as I remember, it is approximately the same time—I am not absolutely sure. I believe it was in November.

Q. In any case, before January 1st?

A. It was before January 1st and before Christmas of that year. [89]

Q. Prior to the time that you signed that agreement, did you read it?

A. Yes, I have read the agreement.

Q. And, by the way, where was it you signed the agreement, do you remember?

A. At the attorney's office in Oakland.

Q. Mr. who? A. Wilson.

Q. You have been in the courtroom during the day and you have heard reference made to that

(Testimony of Winifred Cochran Irwin.)

provision of the articles of co-partnership which designate your father and Bernardo Celli, Sr., as managers, and you have heard other witnesses testify regarding that, is that so? A. Yes.

Q. However, before you came—at the time you signed this agreement did you understand the purpose of that paragraph in the agreement? Was there any discussion regarding that paragraph?

Mr. Nyquist: I object to the question. It is vague. The purpose of the paragraph—the paragraph itself doesn't have a purpose; some individual may have a purpose with respect to a paragraph, but if the question is directed to the purpose of any individual, let us be specific as to whose purpose.

Mr. Freed: If you want to be technical, I will withdraw the question. [90]

Q. (By Mr. Freed): What has been your understanding of the purpose of paragraph 5 of the partnership agreement, if you have an understanding of it?

A. Well, my understanding of it mainly is that in a large business that was to be owned by a group of partners it seemed wisest to have two people to act as managers and to make the decisions, because two people can make decisions easier than a whole group of people, and it was my understanding that it was a device for managing the business in an economical and in a fair manner, and also the inequality of numbers in the membership of the

(Testimony of Winifred Cochran Irwin.)

partnership may have had something to do with it at that time. That is, so that each family would be equally represented by the two senior members who had the most experience in the business, and we all recognized that at the time.

Q. Now, did you keep in touch with the partnership affairs after you signed the partnership agreement?

A. I was particularly interested in the financial progress of the partnership, yes. Financial statements at the end of the year, which I received.

Q. Were you in touch with any of the activities of the business relating to the acquisition or sale of any of the property of the partnership?

A. Yes. Whenever a new piece of property was to be purchased we all knew about it ahead of time. We knew where the [91] property was and we entered into discussions about the purpose of that property and what was to be done with it, and why it was to be purchased and so on.

Q. What kind of property are you referring to?

A. Well, especially in 1943 when Cochran and Celli acquired their present business location.

Q. You are referring to the real property?

A. Yes, realty.

Q. You say—is it your testimony that you were in touch back in 1943 with the acquisition by the business of that block of real property?

A. Yes, particularly with my brother Sidney, who was very much interested in acquiring it at the time, along with other members.

(Testimony of Winifred Cochran Irwin.)

Q. Do you remember the circumstances, for example, under which that property was acquired, that is, to the extent you were in touch with them?

A. I knew about it only ahead of time. I did not know about it at the time the final decision was made, just to the extent of discussing it beforehand.

Q. Were you familiar with the location?

A. Yes, sir, and also there were certain circumstances attending that purchase, the location where Cochran and Celli had its main office buildings and its service buildings was to be used as an overpass area for the new highway that was to go [92] through Oakland, and we had all known for a long time that was to be condemned, and it wasn't going to be desirable, a desirable place to operate a business, and we had known that for some time and that is one reason why Cochran and Celli had been looking around for another location.

Q. Were you familiar with that location when acquired in 1943? A. Yes, because——

Q. Had you investigated, yourself, for example, or expressed an opinion regarding it?

A. Well, I knew the location because Cochran and Celli formerly leased a building on the opposite corner for their sales room and also there was a small used car sales room in the same place, directly across the street, so I knew the location and also I knew the building and the place at the time of purchase.

(Testimony of Winifred Cochran Irwin.)

Q. Did you participate in any discussion with any of the other partners prior to the time that Cochran and Celli purchased that block of property?

A. Yes. Besides my brother that I mentioned.

Q. Was it just your brother Sid you referred to?

A. No, there were other members of the family.

Q. For example, who else did you talk to about it?

A. Well, my other brother, Donald Cochran, and I know my brother and I discussed it at the time, were very much interested [93] in it, and my father, I undoubtedly discussed it with him.

Q. Did you take a look at it, for example, before you bought it?

A. Yes, I remember the building very well as it was before Cochran and Celli bought it. I knew the location.

Q. You have heard your sister, Mrs. Johnson, testify regarding the matter of drawings from the business by her? You have heard that testimony?

A. Yes.

Q. Would your testimony be substantially the same as hers regarding your drawings?

A. Yes, it would be. During those years in which the partnership was first formed I had my own job and was self-supporting and didn't feel the need for withdrawing any money from the business other than my car needs and that sort of thing.

Q. Did your drawings increase as time went on?

(Testimony of Winifred Cochran Irwin.)

A. Yes, during the forties they have increased. However, it has been a company policy to allow our money and our profits from the business to be used for business expansion, and that was a company policy since the inception of Cochran and Celli, and particularly in the years when the firm was beginning to get on its feet financially and make money and to think about new expansion, because, among other things, the need was for a new location and they needed money, needed capital, to do that. [94]

Q. Now, when the operating divisions or departments of Cochran and Celli were reorganized into a corporation on July 1, 1948, did you receive stock for your share of net worth in the partnership? A. Yes, I did.

Q. And do you have any recollection of the number of shares you received?

A. Yes. It is approximately 768 shares.

Q. How many? A. 768 shares.

Q. With a par value of how much?

A. \$100.

Q. And you received a share certificate for those shares, did you? A. Yes.

Q. You still have it? A. Yes, I do.

Q. Delivered to you personally, was it?

A. Yes. I keep it with my other valuables in a safety deposit.

Q. Was there any understanding between the partners as to whether you or your sister were to receive any salaries, for example?

(Testimony of Winifred Cochran Irwin.)

A. Yes, there was an understanding to that effect. Any partner that rendered services to the business was to receive a [95] salary, and had I elected to work for Cochran and Celli after my graduation from college I would have received a salary at that time. For the partners that were not working partners, they would share only in the profits of the business and receive only their share in that, their capital investment account percentage of the capital investment allowed.

Q. Now, did you receive—withdraw that.

To what extent, if any, did you maintain a familiarity with the financial affairs of the corporation—I mean the partnership, not the corporation, the partnership, through financial reports or statements?

A. Well, I was interested in my particular financial report and the increase in my investment from year to year and the overall picture of how the business was operating and its growth, the growth of the business.

Q. And how often did you see financial statements or reports?

A. Generally speaking, once a year, although I could have seen them at any time.

Mr. Freed: You may take the witness, Mr. Nyquist.

Mr. Nyquist: No questions.

(Witness excused.)

Mr. Freed: I call Mr. Bernard Celli, Jr., as a witness.

Whereupon, [96]

BERNARDO CELLI, JR.

was called as a witness on behalf of the Petitioner, and having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: Bernardo Celli, 1900 Melvin Road, Oakland.

Direct Examination

By Mr. Freed:

Q. Mr. Celli, you are the Bernardo Celli, Jr., mentioned in the articles of co-partnership of Cochran and Celli, are you not? A. I am.

Q. You are the senior surviving member of that family, are you not? A. That's right.

Q. That is, Bernardo Celli, Sr., your father, passed away in August of 1945, and your mother passed away in February of 1947, is that correct?

A. That's right.

Q. Your brother Lloyd is still living, is that correct? A. Yes.

Q. When were you born?

A. June 18, 1911.

Q. And there were only four members of your family, were there not? A. That's right.

Q. Up until the death of your father? [97]

A. That's right.

Q. That is, your father and mother and you and your brother Lloyd? A. Right.

Q. And your family has been unrelated to the Cochran family by blood or by marriage?

(Testimony of Bernardo Celli, Jr.)

A. That's correct.

Q. How long have you known the members of the Cochran family; that is, the children and the parents?

A. Ever since I can remember. We were children together, at least the Cochran children and my brother and I were all children together. I can't give it to you, the number of years, but it is over thirty years.

Q. Now, you and your brother Lloyd worked in the business, didn't you? A. Yes.

Q. Did you work in the business and did your brother work in the business during the school period of your lives?

A. I worked in the business ever since I can remember. I remember going down as a small boy and working around the shop every day after school until my college days and then I only worked about two years after—of my college afternoons, and all during vacations.

Q. Do you remember the children of the Cochran family also working in the business? [98]

A. Yes, I do.

Q. During the school years?

A. Yes, I do. They used to come down on Saturdays and holidays—not holidays, but vacations, and after school.

Q. Do you remember the girls, that is, Bernice and Winifred, coming down to the place of business during their earlier years?

A. Yes, and working in the office.

(Testimony of Bernardo Celli, Jr.)

Q. You participated in the formation of the Cochran and Celli partnership by virtue of that partnership agreement dated the first day of January, 1938? A. That's right.

Q. And prior to the formation of that partnership did you take any part in any discussions with respect to the formation of that partnership?

A. Yes, I did, definitely. We discussed it with the attorney, among our family, and with Mr. Cochran and Sid Cochran.

Q. Was there any question raised regarding the acceptance of the Cochran daughters as partners in that partnership?

A. We discussed that among our family and we had known the girls, like I stated, since we were children together, knew the girls. They were girls of good character, good moral standing. In fact, I went to school with Winifred Cochran, and in view of that we certainly accepted them as partners. We were willing to accept them as partners before we signed up. [99]

Q. According to the provisions of paragraph—according to the provisions of the partnership agreement, Mr. Celli, nominally you are one of the managers, are you, as provided by paragraph 5 of that partnership agreement, now that your father has passed away? A. Yes.

Q. Have you ever exercised any of those powers provided for in that paragraph?

A. To my knowledge, those powers have never

(Testimony of Bernardo Celli, Jr.)

been exercised by either—by Dad or Mr. Cochran or myself.

Q. What was your understanding of the purpose of that device or provision of the agreement?

A. Well, primarily, one reason was that the Cochran family outnumbered the Celli family by one person in 1938, and then with the possibility of two people in 1941 when it was contemplated Don would come into the business—there was that equality we did want to maintain by having one representation from each family. Secondly, we were all young in the business. Certainly Mr. Cochran with his experience and my Dad with his experience would be better qualified to guide us in case of a dispute, and another reason was that if a decision had to be made it would be hard to assemble all nine partners and might be hard for them all to agree on one thing, so we felt it was fair to have representation from each family, and it has worked out that way. [100]

Q. Now, to your knowledge, what restrictions, if any, were there on the right of the partners, including Mrs. Johnson and Mrs. Irwin, to draw money from the business?

Mr. Nyquist: Objection, your Honor. That is covered by the partnership agreement. The instrument speaks for itself.

The Court: You say what provision was there?

Mr. Freed: What restrictions, if any, were there?

(Testimony of Bernardo Celli, Jr.)

The Court: That is covered by the agreement, is it not?

Mr. Freed: I don't think so. They can withdraw, retire from the partnership, and give notice, and withdraw all their capital and earnings at any time, but I mean drawings in the current sense. There is a schedule of drawings in——

The Court: You mean the management has the control as to what shall be withdrawn?

Mr. Freed: Was there such control over drawings, or were they free to draw as other partners were, or were the other partners restricted from their drawings; what were the restrictions, if any, not only with reference to the agreement—the agreement isn't the only thing involved here; the conduct of the parties—and from time to time they would make other agreements, other understandings of business. They don't freeze the agreement in the first place and stop right there. They modify and change and make decisions that——

The Court: As I understand your question it does not call for an answer that would be in contradiction of the language of [101] the agreement.

Mr. Freed: It might be, possibly. I am just asking the question whether there were any restrictions.

The Court: In other words, you want to know what the practice was?

Mr. Freed: That's right.

The Court: All right.

Q. (By Mr. Freed): What was the practice

(Testimony of Bernardo Celli, Jr.)

regarding drawings relating to all the partners, including Mrs. Johnson and Mrs. Irwin?

A. It was optional with the partners to draw just whatever they needed for their own use. If they needed some money to pay for life insurance or buy a home or anything else, it was their option to withdraw that money.

Q. That applied to all of the partners?

A. Absolutely.

Q. To the two daughters as well as the others?

A. Absolutely.

The Court: How did that affect the investment accounts of the partners; I mean the relative status of the investment accounts?

The Witness: Nobody took advantage of the situation, so we never were confronted with that problem.

The Court: There were withdrawals, were there not?

The Witness: Yes, but I mean there were never any large [102] withdrawals.

The Court: Did everybody withdraw in the same time, in the same year?

The Witness: No, we withdrew as we saw fit. My personal drawing account is different than anybody else's.

The Court: What disposition was made of that part of your drawing account that was not drawn?

The Witness: That was left, to remain in the business.

(Testimony of Bernardo Celli, Jr.)

The Court: And become part of the investment account of the particular partner?

The Witness: That's right.

The Court: That would soon upset the proportionate investment interest, wouldn't it?

The Witness: Yes, it could.

The Court: And did it?

The Witness: Yes, it did.

The Court: And it would affect the amount, it would affect the distribution of the profits?

The Witness: No, it didn't because the profits were to be distributed fifty per cent with the Cochran family and fifty per cent with the Celli family.

Q. (By Mr. Freed): In the families themselves there would be an effect, would there, on the distributive shares of the profits to the partners; that is, within each group, depending upon the [103] balance in the investment accounts in this certain year, is that correct?

A. I don't know if I understand your question correctly or not, but it is my understanding if a profit is made, after it goes to the Celli family and their proportionate share——

Q. It is within the family?

A. Within the family. The other fifty per cent goes to the Cochran family and their proportionate share.

The Court: The amount of the investment by each family was not determinative as to the amount of distribution?

(Testimony of Bernardo Celli, Jr.)

The Witness: No.

The Court: In other words, the Celli family, if it so desired, might withdraw all of its withdrawal accounts, the Cochran family might leave all its drawing accounts in the business and yet you would divide the profits, the net profit at the end of each year, equally between the two families?

The Witness: It could work out that way.

The Court: Then, what is the significance of capital investment?

The Witness: We were never over-capitalized, your Honor, or we were always in need of money. We have always expanded and we believe we are going to continue expanding, so we are always in need of money. We were never over-capitalized.

Q. (By Mr. Freed): Let us refer to the year 1943, the year in which this [104] business block in the heart of Oakland—is it not? A. Yes.

Q. —was purchased by Cochran and Celli. What was your need for money at that time?

A. We borrowed money to remodel the entire block. We needed money for—we were facing a problem of postwar inventories which had to be met. We needed money, like I said, to remodel the building.

Q. Did you buy that property for cash?

A. Yes, I think we did. My best recollection is that we did.

Q. By the way, when that property was acquired, was it vested in you and Sidney Cochran as trustees for the other partners?

A. Yes, it was.

(Testimony of Bernardo Celli, Jr.)

Q. Mr. Celli, I would like to show you Petitioner's Exhibit 11, which is a statement of partners' earnings for services rendered and have you explain for the record, if you can, the absence of any earnings to Lloyd J. Celli in 1943 and 1944.

A. Lloyd was in the army at that time.

Q. And no salary was paid to him during those years?

A. He received no salary.

Q. And rendered no services, is that correct?

A. That's right. [105]

Q. Did he go into the army in 1942? I notice there there is a small amount of salary, \$337.

A. To my best recollection, he went in in 1942.

Q. Yes. Now, are you familiar with the reason for no salaries to Sidney E. Cochran in 1944, according to this schedule?

A. I think that Sidney Cochran at that time was in a temporary position with the Kaiser Company.

Q. He was not working for Cochran and Celli?

A. That's right.

Mr. Freed: You may take the witness, Mr. Nyquist.

Cross-Examination

By Mr. Nyquist:

Q. Mr. Celli, you are familiar with the provisions in article 5 of the partnership agreement dated January 1, 1938; therein it is provided that the managing partners shall have the sole and exclusive power and authority to collect and distribute

(Testimony of Bernardo Celli, Jr.)

the assets and profits of said co-partnership among and between the said co-partners or any of them, and to make payment thereof for any part or portion thereof to the respective co-partners. You are aware that that provision is in the agreement, are you not? A. Yes.

Q. Now, was there any formal agreement modifying that provision? [106]

Mr. Freed: Just a moment. If your Honor please, I was listening to something else. Would you be so kind as to read back the whole question?

Mr. Nyquist: I quoted the provision in article 5 with respect to distribution of profits.

Mr. Freed: Where did you begin and where did you stop?

Mr. Nyquist: I quoted that portion of article 5 and asked whether there had been any formal agreement modifying that provision.

The Witness: I don't know if that is covered in the amendment or not. I don't know.

Q. (By Mr. Nyquist): Did a dispute ever arise between any of the managing partners and any of the other partners with respect to their rights to withdraw any profits? A. No.

Q. You testified on direct examination that it was optional with the partners to determine what they wished to withdraw. Did you base that merely upon the fact that there had been no disagreements on the matter?

A. Partly. We trusted each other, yes, and also

it is covered in the agreement that we can withdraw amounts from our capital.

Q. But with respect to distribution of earnings, the article specifically places in the managing partners the [107] authority to distribute the assets among and between said co-partners or any of them, or to make payment thereof, or any part or portion thereof to said respective co-partners.

Mr. Freed: May I interrupt at this time. I am sure counsel intended nothing unfair but I think it would be fair if the provisions of paragraph 6 which touch upon that matter should also be read to the witness.

The Court: You can bring that out on redirect.

Q. (By Mr. Nyquist): I am asking whether there was any formal agreement between the parties modifying that? A. Modifying what?

Q. Modifying that provision that I have read?

A. Not that I recall.

Q. And there was never any dispute which arose over the application of that, over the exercise of that authority by the managing partners, was there? A. No disputes, no.

Q. Then, as a matter of fact, you have no basis, have you, for the conclusion that you reached that it was optional with the partners to determine how much they would withdraw?

A. It was optional with the partners to draw what they wanted.

Q. Upon what do you base that?

A. It is covered—it is my understanding. [108]

(Testimony of Bernardo Celli, Jr.)

Q. You mean the managing partners have never exercised any rights to limit the withdrawals?

A. That is true. We have never—the managing partners have never exercised their power to limit anyone's drawings.

Q. And the drawings, by the individuals, have always been such that the managing partners have never had occasion to question the amount, is that correct?

A. That is right.

Mr. Nyquist: I have no further questions.

Redirect Examination

By Mr. Freed:

Q. Mr. Celli, I will direct your attention to the provisions of paragraph 6 of the articles of co-partnership, and I will read a portion of it to you in connection with the point that has just been raised by counsel regarding the power of the managers to prevent distribution. You will observe that in paragraph 6, after referring to the calendar year accounting provided for assessments of losses against the partners, that it is provided that: "Said managers may, if they deem it advisable, set aside a portion of, or all of any said profits as a reserve for such purpose or purposes as may be deemed advisable by them. It is understood however that nothing herein shall prevent the distribution of profits or assessment of losses more often than the interval of one year, as above specified." [109]

Now, with knowledge of that provision in the

(Testimony of Bernardo Celli, Jr.)

agreement, what is your testimony regarding the powers of the managers as provided by paragraph 5 to prevent the distribution of profits?

A. They couldn't prevent the distribution of profits. The profits had to be distributed to the two families. I don't know if I understand your question correctly.

Q. That is what I had in mind. I am referring to the provision—counsel referred to the provisions of a paragraph. I am referring to the provisions of another paragraph and your testimony fits in somewhere in between. As I understand, it was optional for the partners to draw, so far as the practice of the partners is concerned.

The Court: That refers to distribution, not to withdrawals.

Mr. Freed: Yes.

The Court: What does distribution mean when you use the term in connection with the term distribution of profits of a partnership; does it mean certain partners have distribution and others cannot? Distribution, I think, is an affirmative act by those in control of the partnership. Now, when they distribute what do they do; they distribute to all partners alike, do they not?

Mr. Freed: Yes, they do.

The Court: How does that tie in with the proposition that any particular partner can withdraw any amount he wants to, [110] either of earnings or capital without any reference whatever to a distribution?

(Testimony of Bernardo Celli, Jr.)

Mr. Freed: Well, we might ask the witness that question.

The Court: All right. Do you understand?

The Witness: Well, I think I do, your Honor. The partners can withdraw any part of their capital investment. That is, they can withdraw any part of the profits distributed at the end of the year, if I understand the question correctly.

The Court: Well, now, let us see. If a distribution is made it doesn't have to be actually paid out; it could be credited on the books and distribution would be credited on the books, we will say—distribution I am talking about.

The Witness: That's right.

The Court: In proportion to the partnership interest, the several partnership interests. Now when that account is set up to the credit of an individual partner, they can withdraw any part of that, is that what you mean?

The Witness: That's right.

The Court: Any further questions?

Mr. Freed: Yes.

Q. (By Mr. Freed): Is it your testimony, Mr. Celli, that—

Mr. Nyquist: Objection. That starts to be a leading question, "Is it your testimony [111] that—."

Q. (By Mr. Freed): What was the practice, then, let me put it that way. We have had questions relating to the agreement, and now I would like to ask a question relating to whether or not there

(Testimony of Bernardo Celli, Jr.)

were any limitations by virtue of the practice of the partners in withdrawals on the right of any partners to withdraw money from the business and charge it against that partner's account?

A. It was never a practice of any of the partners to withdraw large amounts of money. We all left our money in the business so we could use it in the business.

Q. Does that apply to all of the partners?

A. Yes.

Mr. Freed: No further questions.

Recross-Examination

By Mr. Nyquist:

Q. When Mr. Freed read to you from paragraph 6, the provision concerning—when he read the following sentence, “It is understood however that nothing herein shall prevent the distribution of profits or assessment of losses more often than the interval of one year as above specified,” did you interpret that statement that “nothing herein shall prevent the distribution of profits” as meaning that this shall require the distribution of profits at least once a year?

A. Well, I interpret that as meaning that the partners, the managing partners, would distribute the profits at least—not less than once a year, or assess any losses. [112]

Q. But provision 6 relates to distribution of profits; the statement in article 5 relates to collec-

(Testimony of Bernardo Celli, Jr.)

tion and distribution of assets or profits and payment thereof or any portion thereof to partners.

Mr. Freed: What is that?

Mr. Nyquist: The two sections, section 5 and section 6. Section 6 relates to distribution of profits among the partners, apparently an accounting procedure; section 5 relates to payment or any portion thereof to the respective partners and section 5, with respect to payments, is the section that contains the restrictions that we have mentioned, giving the managing partners the sole and exclusive authority to determine when such payments shall be made.

Q. (By Mr. Nyquist): Now, as I understand your testimony, you have said that there has been no formal agreement modifying that provision?

A. Not that I recall.

Q. And your only reason for saying that the partners had a right to withdraw whatever they wished is that no dispute has ever arisen concerning the application of that provision?

A. There never has been a dispute.

Mr. Nyquist: No further questions.

Mr. Freed: No questions.

The Court: That is all.

(Witness excused.) [113]

The Court: Any other witnesses?

Mr. Freed: That is the case.

The Court: The Petitioner rests.

Mr. Nyquist: Respondent rests, your Honor.

The Court: Both parties rest. You may have 45 days for simultaneous briefs, 30 days for answering briefs. That concludes the hearing.

Mr. Nyquist: Both of the parties would like to request a little extra time for briefs. Mr. Gebauer is going east. I am going to Salt Lake City. It would be an accommodation to both parties if we could have more time.

The Court: Sixty days for simultaneous briefs and 30 days for answering briefs.

Mr. Nyquist: Thank you.

The Court: We will adjourn until 10:00 o'clock tomorrow morning.

(Whereupon, at 3:30 o'clock p.m., the hearing in the above-entitled matter was concluded.)

Filed T.C.U.S. June 2, 1950. [114]

The Tax Court of the United States

Docket Nos. 26266, 26267

ESTATE OF MABEL COCHRAN, Deceased;
SIDNEY ELMER COCHRAN and DONALD
ROBERT COCHRAN, Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

JOSEPH E. COCHRAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Upon the basis of the facts presented, held, that the members of the Cochran family did not intend to join together as partners with either of the two daughters of the petitioner, Joseph E. Cochran, and the decedent, Mabel Cochran, in the present conduct of the automobile dealership business either when the partnership was formed in 1937 or at any other time during the years 1942, 1943 and 1944.

ELI FREED, ESQ., and
EMMETT GEBAUER, ESQ.,

For the Petitioners.

CHARLES W. NYQUIST, ESQ.,

For the Respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

These cases were consolidated for hearing and decision. The respondent determined deficiencies in petitioners' income and victory tax for 1943 and income tax for 1944 as follows:

Docket

No.	Year	Deficiency
26266	1943 Estate of Mabel Cochran	\$ 9,468.67
	1944	8,005.14
26267	1943 Joseph E. Cochran	10,078.72
	1944	8,619.36

Computation of the deficiencies for 1943 involves income for both 1942 and 1943 because of the Current Tax Payment Act of 1943.

The issue presented for decision is as follows:

Did the respondent err in including in the gross income of Joseph E. Cochran and the decedent, Mabel Cochran, the distributive shares of income of the partnership, Cochran & Celli, attributable to the partnership interests of the Cochran daughters, Bernice Cochran Johnson and Winifred Cochran Irwin?

Findings of Fact

Part of the facts were stipulated and they are so found.

The two petitioners herein are the Estate of Mabel Cochran, deceased, Sidney Elmer Cochran and Donald Robert Cochran, Executors, and Joseph E. Cochran, an individual. The petitioner, Joseph

E. Cochran, resides in the State of California, as did the decedent, Mabel Cochran.

The decedent, Mabel Cochran, her husband, Joseph E. Cochran, and their daughters, Bernice Cochran Johnson and Winifred Cochran Irwin, each filed individual Federal income tax returns for each of the calendar years 1943 and 1944 with the collector of internal revenue for the first district of California. On the returns they reported gross income, income from the partnership of Cochran & Celli, net income and income tax due in the amounts shown in the following schedule:

1943

	Gross Income	Income from Partnership	Net Income	Tax Due
J. E. Cochran	\$20,777.36	\$20,777.36	\$19,756.31	\$8,822.06
Mabel Cochran	15,977.36	15,977.36	15,325.13	6,701.60
Bernice C. Johnson....	16,912.12	14,202.09	16,638.60	5,584.98
Winifred C. Irwin	15,910.30	14,202.09	15,605.32	5,481.02

1944

J. E. Cochran	\$20,370.77	\$20,370.77	\$19,832.73	\$7,467.23
Mabel Cochran	15,570.77	15,570.77	15,039.85	4,949.93
Bernice C. Johnson..	16,259.16	13,840.71	15,759.16	4,839.58
Winifred C. Irwin	15,551.95	13,840.70	15,051.95	4,955.98

The "Tax Due" in the above schedule for the year 1943 includes the unforgiven part of the 1942 tax. The "Income from Partnership" for the year 1944 includes a small amount of capital gain (\$318.30 or less) in each case.

For a number of years prior to 1938, the petitioner, Joseph E. Cochran, and one Bernardo Celli, Sr., owned and operated as copartners a Chevrolet automobile dealership in Oakland, California, under the firm name of "Cochran & Celli."

In 1937 the two adult sons of the Cellis, Lloyd and Bernardo, Jr., were employed in the business, as was Sidney Cochran, the adult Cochran son. The Cellis had no other children, but in the Cochran family, besides Sidney, there were two adult daughters, Bernice and Winifred, and a minor son, Donald, who was approximately 17 years of age at that time (1937).

In order to perpetuate the Chevrolet franchise in their families and to interest their sons in staying in the business, the two partners decided in 1937 to take their sons into the business as copartners.

Under the new partnership agreement, dated January 1, 1938, not only the sons, but also Mabel Cochran, the wife of Joseph E. Cochran, Anna Celli, the wife of Bernardo Celli, Sr., and the Cochran daughters, Bernice and Winifred, were to be copartners in the business. The two Cochran daughters were included because their father felt morally obligated to give them as much as he gave his sons. There was also an understanding among the families that Donald Cochran was to become a partner when he reached his majority.

Under the new partnership agreement no additional capital was at any time invested in the business by any of the copartners. The source of the capital investments of the new copartners, who were members of the Cochran family, were withdrawals from the Joseph E. Cochran investment account. Such transfers were at all times treated by Joseph E. Cochran as gifts of interest in the business and

in making them he took advantage of the community property laws of the State of California by first crediting his wife's new investment account with a substantial part of the withdrawal from his account, and then spreading out over a period of years the transfers to the Cochran children of portions of his own and his wife's investments in the business, so that he and his wife filed gift tax returns for the year 1937 only and reported no gift tax due. When Donald Cochran was brought into the business as a copartner in 1941, his capital investment account was similarly set up as a result of transfers of capital from the accounts of his parents, brother and sisters in accordance with a verbal understanding existing at the time Sidney, Bernice and Winifred acquired their interests in the business.

The withdrawals from the Joseph E. Cochran investment account, the credits to his wife's new investment account, the crediting of new investment accounts of the Cochran daughters, Bernice and Winifred, and their signing of the partnership agreement all took place within the months of November and December, 1937, and were all component parts of a single plan to make all members of the Cochran family copartners in the business.

The new partnership was managed by the two original partners, assisted by their sons. The Cochran daughters neither shared in the management or control of the new partnership, nor did they render

any services to the business. In 1942, 1943 and 1944 both daughters made regular withdrawals of money from the accumulated profits of the partnership credited to their accounts.

There was no bona fide intent on the part of the copartners of Cochran & Celli and the two Cochran daughters, Bernice and Winifred, either when the partnership was formed or at any other time during the taxable years 1942, 1943 and 1944, that the two Cochran daughters were to be joined with members of the existing partnership of Cochran & Celli for the purpose of carrying on business as a partnership. Bernice Cochran Johnson and Winifred Cochran Irwin were not valid partners for income tax purposes in the business of Cochran & Celli during the years 1942, 1943 and 1944.

Opinion

Hill, Judge: The sole issue presented for decision herein is whether the respondent erred by including in petitioners' gross income the distributive shares of income of the partnership, Cochran & Celli, attributable to the partnership interests of the two Cochran daughters, Bernice and Winifred. This issue raises a question of fact whether there was a bona fide intent on the part of the partners in the business known as Cochran & Celli and the two Cochran daughters that the two Cochran daughters really and truly were to be joined as partners in the business. *Commissioner v. Culbertson*, 337 U. S. 733. The burden of proof in this respect rests upon

the petitioners under Rule 32 of the Rules of Practice.

The evidence presented by the petitioners shows that in the years 1942, 1943, and 1944, the Cochran daughters, Bernice and Winifred, each withdrew for their own personal use profits from the business of Cochran & Celli. On the other hand the evidence also showed that neither of them performed any services for the new partnership and their testimony failed to establish the fact that they had any voice in the management and control of the business. Furthermore, their investments of capital in the business did not originate with them but with their parents. Petitioner Joseph E. Cochran testified that the reason he made his daughters partners in the business was to afford them treatment equal to that he had shown his sons. While his motive was commendable, the fact remains the evidence fails to show the existence of any business purpose for bringing either of the two daughters into the partnership or that there was a bona fide intent that the two daughters be joined as partners in the business in question.

From a consideration of the entire record, we believe and hold that petitioners have failed to meet the burden of proving the reality of the partnership insofar as the Cochran daughters are concerned.

Accordingly, we hold that the respondent did not err in including in petitioners' gross income for 1942, 1943, and 1944, the distributive shares of income of the partnership, Cochran & Celli, attrib-

utable to the alleged partnership interest of Bernice Cochran Johnson and Winifred Cochran Irwin.

Decisions will be entered for the respondent.

Entered July 12, 1951.

Received July 9, 1951.

Served July 16, 1951.

The Tax Court of the United States
Washington

Docket No. 26266

Estate of MABEL COCHRAN, Deceased; SID-
NEY ELMER COCHRAN and DONALD
ROBERT COCHRAN, Executors,
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered July 12, 1951, it is

Ordered and Decided: That there are deficiencies in income and victory tax for the year 1943, in the amount of \$9,468.67, and income tax for the year 1944, in the amount of \$8,005.14.

/s/ EUGENE BLACK,
Judge.

Entered July 16, 1951.

Served July 18, 1951.

The Tax Court of the United States
Washington

Docket No. 26267

JOSEPH E. COCHRAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered July 12, 1951, it is

Ordered and Decided: That there are deficiencies in income and victory tax for the year 1943, in the amount of \$10,078.72, and in income tax for the year 1944, in the amount of \$8,619.36.

/s/ EUGENE BLACK,
Judge.

Entered July 16, 1951.

Served July 18, 1951.

In the United States Court of Appeals
for the Ninth Circuit

Tax Court Docket No. 26266

Estate of MABEL COCHRAN, Deceased; SID-
NEY ELMER COCHRAN and DONALD
ROBERT COCHRAN, Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Tax Court Docket No. 26267

JOSEPH E. COCHRAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW

Taxpayers, petitioners in this cause, by Eli Freed, Emmett Gebauer, and Scott Fleming, counsel, hereby file their petition for a review by the United States Court of Appeals for the Ninth Circuit of the decisions by the Tax Court of the United States, promulgated July 12, 1951, 10 T.C.M. 675, determining deficiencies in said petitioners' federal income and victory taxes for the calendar year 1943, and income taxes for the calendar year 1944, as follows:

Estate of Mabel Cochran, Deceased:

1943 income and victory taxes . \$ 9,468.67

1944 income taxes 8,005.14

Joseph E. Cochran:

1943 income and victory taxes.. 10,078.72

1944 income taxes 8,619.36

The decision determining said deficiencies was rendered and entered July 16, 1951, after hearing by the Tax Court of the United States in San Francisco, California.

Petitioners respectfully show:

I.

That Petitioner Estate of Mabel Cochran, Deceased, is the estate of a decedent; that said estate is being probated in the County of Alameda, State of California; that Sidney Elmer Cochran and Donald Robert Cochran are the duly appointed, qualified, and acting executors of said estate.

That petitioner, Joseph E. Cochran, is an individual residing in Orinda, Contra Costa County, California.

II.

This petition for review is properly directed to the United States Court of Appeals for the Ninth Circuit in accordance with the provisions of the Internal Revenue Code, Section 1141(b)(1), in that the tax returns with respect to which the asserted liabilities arise were made to the Office of the Collector of Internal Revenue for the First District of California.

III.

Nature of the Controversy

The controversy involves the proper determination of the petitioners' federal income and victory tax liability for the calendar year 1943, and income tax liability for the calendar year 1944.

For a number of years prior to December 31, 1937, petitioner Joseph E. Cochran and Bernardo Celli, Sr., now deceased, owned and operated as co-partners a Chevrolet automobile dealership business in Oakland, California, under the firm name "Cochran & Celli." On or about January 1, 1938, the said Bernardo Celli, Sr., Joseph E. Cochran, petitioner herein, and Mabel Cochran, his wife, since deceased, whose estate is a petitioner herein, and certain other persons, including Bernice M. Cochran and Winifred Cochran, adult daughters of the said Joseph E. Cochran and Mabel Cochran, entered into a partnership for the transaction of the aforesaid Chevrolet automobile dealership business; and at all times from its organization through the calendar years 1943 and 1944 involved in this proceeding said business was conducted as a partnership.

The petitioners contend that said partnership was organized and conducted in good faith and that it was intended to be and was a real, true, and bona fide partnership during the calendar years 1943 and 1944, and that said partnership is entitled to full recognition for federal income and victory tax purposes for such years.

Respondent contends that, insofar as Bernice

Cochran Johnson, formerly the said Bernice M. Cochran, and Winifred Cochran Irwin, formerly the said Winifred Cochran, are concerned, said partnership was not a real, true, and bona fide partnership during the calendar years 1943 and 1944 and is not entitled to recognition for federal income and victory tax purposes for such years; and respondent asserted tax deficiencies for the calendar years 1943 and 1944 on the ground that said Bernice Cochran Johnson and Winifred Cochran Irwin were not then bona fide and valid partners for federal income and victory tax purposes.

IV.

The aforesaid assertion of tax deficiencies was sustained by the Tax Court of the United States; and petitioners, being aggrieved by the findings of fact and opinion of said court and by its decision entered pursuant thereto, desire to obtain a review thereof by the United States Court of Appeals for the Ninth Circuit.

Dated: October 3, 1951.

/s/ ELI FREED,

/s/ EMMETT GEBAUER,

/s/ SCOTT FLEMING,

1069 Mills Building, San Francisco 4, California,
Counsel for Petitioners.

Received and filed T.C.U.S. October 8, 1951.

[Title of Tax Court and Causes.]

CERTIFICATE

I, Ralph A. Starnes, Chief Deputy Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 28, inclusive, constitute and are all of the original papers and proceedings, including Petitioner's Exhibits 23 to 26, inclusive, admitted in evidence, on file in my office as the original and complete record in the proceedings before The Tax Court of the United States in the above-entitled proceedings and in which the petitioners in The Tax Court proceedings have initiated an appeal as above-numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 25th day of October, 1951.

[Seal] /s/ RALPH A. STARNES,
Chief Deputy Clerk The Tax Court of the United
States.

[Endorsed]: No. 13147. United States Court of Appeals for the Ninth Circuit. Estate of Mabel Cochran, Deceased; Sidney Elmer Cochran and Donald Robert Cochran, Executors, and Joseph E. Cochran, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Petition to Review a Decision of The Tax Court of the United States.

Filed November 1, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13147

ESTATE OF MABEL COCHRAN, Deceased;
SIDNEY ELMER COCHRAN and DONALD
ROBERT COCHRAN, Executors,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

JOSEPH E. COCHRAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

POINTS ON WHICH PETITIONERS
INTEND TO RELY

As and for points on which petitioners intend to rely in the prosecution of this appeal, petitioners assert that the decisions of the Tax Court herein were pervaded by the general errors of fact and law set forth under I below, by reason of which said court made the particular legal and factual errors set forth under II below.

I.

General Nature and Basis of Errors

The decisions of the Tax Court in the above-

entitled matters are infected throughout by the failure of said court to adhere to and apply the "bona fide intent" rule laid down by the controlling authorities and particularly exemplified by the opinion of the United States Supreme Court in the case of Commissioner of Internal Revenue vs. Culbertson (1949), 337 U.S. 733. Petitioners submit that the Tax Court, while purporting to observe applicable and established principles set forth in the Culbertson decision and other leading authorities in this field of law, actually ignored such principles and followed instead the supposed rules, repudiated in the Culbertson decision, purporting to require either the contribution of "original capital" or "vital services."

By reason of the Tax Court's failure to appreciate, observe, and apply the "bona fide intent" test, it failed properly to consider circumstances surrounding the partnership here involved, as shown by the facts stipulated, the exhibits, and the testimony, for the light that such circumstances shed on the dominant question of bona fide intent to do business as partners. The Tax Court erroneously failed to appreciate the relevancy of and give proper weight to the evidence submitted by petitioners, and by reason of such failure it erroneously concluded that petitioners had not met the burden of proof necessary to establish such "bona fide intent" to establish and conduct the business involved as real and true partners.

Had the Tax Court properly observed and applied sound principles of family partnership law as laid

down in the Culbertson case and other leading authorities, it would necessarily have made findings and reached conclusions, on the basis of the record herein, substantially in accordance with those set forth under II, below. From such findings and conclusions necessarily required by the facts stipulated and evidence introduced, decisions in favor of the petitioners would necessarily follow as a matter of law.

II.

Particular Errors Committed by the Tax Court

1. As a result of the fundamental, underlying, erroneous view and application of the law as above set forth, the Tax Court erred in failing to make the following findings which were proposed by the petitioners and which are included in the printed record prepared herein under the heading "Statement of Facts Based on Evidence" and constituting a portion of document No. 15 of the official record. Although petitioners submit that all of their proposed findings were and are required by the evidence and should have been made, petitioners particularly assert error in the failure of the Tax Court to make findings Nos. 7, 14, 27, 28, 32, 36, 40, 44, 45, 46, 51, 52, 53, 54, 57, 58, 60, 61, 63, 64, 65, 71, 72, 73, 74, 76, 81, 82, or findings substantially in accordance therewith.

2. The evidence required the Tax Court to conclude, and said Court erred in not concluding:

(a) That petitioners each made bona fide and completed gifts of capital interests in the business of Cochran & Celli to Bernice Cochran Johnson and

Winifred Cochran Irwin on or about December 24, 1937. That at all times thereafter and throughout the calendar years 1942, 1943 and 1944 said capital interests have in fact been owned by said donees, Bernice Cochran Johnson and Winifred Cochran Irwin.

(b) The ownership, dominion, and control of said business interests by said donees were restricted only by the express provisions of the partnership agreement. The restrictions imposed by said partnership agreement with respect to the interests of Bernice Cochran Johnson and Winifred Cochran Irwin were exactly the same as in the case of the Cochran and Celli sons who have been recognized as valid partners, and necessarily so. Said restrictions served and promoted valid partnership business purposes, were reasonable in nature, and were entirely consistent with the completeness of the original gifts and the reality of the donees' actual and bona fide ownership of the interests given them.

(c) That said Bernice Cochran Johnson and Winifred Cochran Irwin were in all respects treated the same as the other donees, the various sons in the Cochran and Celli families who were recognized as valid partners for income tax purposes, with this one exception: Said sons, during the times when they rendered personal services to the business, were paid salaries as reasonable compensation on account of such personal services. These salaries were in addition to partnership shares of business profits based on ownership of partnership interests in the business. With respect

to partnership shares of profits of the business, Bernice Cochran Johnson and Winifred Cochran Irwin were at all times and in all ways treated the same as all other partners.

(d) At all times from and after the making of the aforesaid completed gifts and the formation of the partnership, Bernice Cochran Johnson and Winifred Cochran Irwin actually owned and were entitled to draw their respective shares of profits from the partnership business for their own separate use to the same extent as any other partners having similar capital interests; said Bernice Cochran Johnson and Winifred Cochran Irwin did draw substantial sums from the business during the taxable years 1942, 1943 and 1944 for their own separate use.

(e) At all times from and after the making of the aforesaid completed gifts and the formation of the partnership, Bernice Cochran Johnson and Winifred Cochran Irwin each had extensive and real control and dominion over her capital investment in the partnership in that each had the right to withdraw from the partnership, or cause a dissolution of the partnership and receive her share of the partnership capital for her own separate use and benefit, in accordance with the provisions of paragraphs 12 and 13 and related provisions of the partnership agreement.

(f) At all times from and after the formation of the partnership, commencing January 1, 1938, and including the years 1942, 1943 and 1944, property was a very significant income-producing factor in the partnership business, and the capital interests

of Bernice Cochran Johnson and Winifred Cochran Irwin and beneficial interests in partnership real property owned by each of them were important in the successful operation of the business.

(g) The partnership, formed at the end of 1937 to commence business at the beginning of 1938, was formed as a result of a bona fide and arms' length transaction between the unrelated families of Cochran and Celli.

(h) That said gifts and the formation of the partnership here in question were motivated solely by the intent to make bona fide gifts of interests in the business to all members of petitioners' family and were not motivated or influenced by income tax considerations.

(i) Bernice Cochran Johnson and Winifred Cochran Irwin should not be differentiated or discriminated against on account of their sex.

3. The law and the evidence required the Tax Court to conclude and said court erred in not concluding that in 1937 when the partnership was organized, in 1938 when it commenced business, and at all times thereafter and throughout the taxable years 1942, 1943 and 1944 Bernice Cochran Johnson and Winifred Cochran Irwin and all other existing partners of Cochran and Celli actually and in good faith intended to and did in fact join together in the present conduct of the business as partners, and said Bernice Cochran Johnson and Winifred Cochran Irwin were valid and bona fide partners for income tax purposes from the beginning of 1938 to and throughout the taxable years 1942, 1943 and 1944.

4. The decisions of the Tax Court are not supported by the evidence and are contrary to the evidence.

5. The decisions of the Tax Court rest on errors of law and are contrary to law.

6. The Tax Court erred in making the following findings of fact:

“There was no bona fide intent on the part of the copartners of Cochran & Celli and the two Cochran daughters, Bernice and Winifred, either when the partnership was formed or at any other time during the taxable years 1942, 1943 and 1944, that the two Cochran daughters were to be joined with members of the existing partnership of Cochran & Celli for the purpose of carrying on business as a partnership. Bernice Cochran Johnson and Winifred Cochran Irwin were not valid partners for income tax purposes in the business of Cochran & Celli during the years 1942, 1943 and 1944.”

7. The Tax Court erred in determining deficiencies against the petitioners instead of determining that there were no tax deficiencies with respect to petitioners' income for the calendar years 1942, 1943 and 1944.

Dated November 30, 1951.

/s/ ELI FREED,

/s/ EMMETT GEBAUER,

/s/ SCOTT FLEMING,

Counsel for Petitioners, 1069 Mills Building, San Francisco 4, California.

[Endorsed]: Filed U.S.C.A. December 1, 1951.

